

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1-121

VOLUME 8 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Betty W. Sephton, Clerk

.....
TRIAL COURT # : 2003-0071-CR

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

v.

Cause No. 2002-0071-CR

CURTIS GIOVANNI FLOWERS

TRANSCRIPT OF THE PRETRIAL, TRIAL AND POST TRIAL PROCEEDINGS
HAD BEFORE THE HONORABLE C. E. "CEM" MORGAN, III, CIRCUIT
JUDGE, FIFTH CIRCUIT DISTRICT OF THE STATE OF MISSISSIPPI, AND
A JURY OF TWELVE MEN AND WOMEN DULY IMPANELED AND SWORN, WITH
THE TRIAL ITSELF BEGINNING ON 2ND DAY OF FEBRUARY, 2004, AND
RUNNING THROUGH FEBRUARY 12, 2004.

APPEARANCES:

Present and Representing the State:

HONORABLE DOUG EVANS

HONORABLE CLYDE HILL

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Present and Representing the Defendant:

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HONORABLE ANDRE DE GRUY

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FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY

D.C.

TABLE OF CONTENTS

	<u>PAGE NO.</u>
Style, Number and Appearances.....	1
Table of Contents	i
Pretrial Hearing of April 21, 2003.....	2
Pretrial Hearing of April 21, 2003 Concluded.....	7
Motion Hearing of June 11, 2003.....	8
Court Ruling returning case to Montgomery County.....	11
Case Set for Trial.....	17
Scheduling of Discovery and Motions.....	19
Hearing of June 11, 2003 Concluded.....	21
Motion Hearing of December 10, 2003.....	22
Motion Hearing of December 10, 2003 Concluded.....	57
Draw Jury Venire on December 29, 2003.....	58
Hearing of December 29, 2003 Concluded.....	63
Clerk calls roll of jury venire on February 2, 2004...	64
Court Opened on February 2, 2004; Court Qualifies the Jury.....	68
Case Called; Parties Announce Ready.....	91
Voir Dire Examination by the Court.....	91
Court Excuses Some Jurors for Cause - JURY OUT	131
Jury Panel sent to lunch with instructions from Court.	138
Discussion of additional voir dire	139
Qualification of additional jurors	140
Noon Recess on February 2, 2004	142
Qualification of additional jurors	145
<u>INDIVIDUAL VOIR DIRE OF FIRST PANEL:</u>	
Juror 2, Felicia Ann Butts	148
Juror 3, Lucy Mae Clark Eskridge	152

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Juror 4, Ella B. Farmer	155
Juror 7, Karen Diane Johnson	157
Juror 8, Judy Tompkins	158
Juror 8A, Gale Lynn Townsend	160
Juror 9, George Willie Woods	166
Juror 11, David E. Miller	170
Juror 13, Willie Floyd Elliott	174
Juror 15, Tammy Jones Oliver	180
Juror 16, Stanley A. Topps	185
Juror 17, Gloria T. Fielder	190
Juror 19, Robert Kent Johnson	198
Juror 23, Timothy Ray James	205
Juror 24, Emily Jean Byars	207
Juror 25, Willie Lee Hamer, Jr.	213
Juror 26, Lester Sawyer	223
Juror 28, Cassandra Evans	230
Juror 29, Gregory Hicks Mitchell	236
Juror 30, Deborah Kay Stafford	244
Juror 31, Angelia Birdsong	254
Juror 32, Donna McNeer	259
Juror 34, Gay Elisabeth Evaldi	266
Juror 35, Burnadette Braswell	269
Juror 36, Nancy Branch	275
Juror 39, Paul W. Kelly	277
Juror 40, Sharon Golden	278
Juror 41, Lisa Rodgers Bane	284
Juror 42, Tasha Benita Hugger	288

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Juror 45, Julia Ann Bond	292
Juror 46, Bertram S. Mortimer	296
Juror 47, Theresa D. Sproles	298
Juror 48, Jerry D. Hudson	307
Juror 49, Wanda G. Hathcock	314
Juror 50, Vicki Renae Pearson	315
Discussion - JURY OUT	323
Jurors Released for Night on 2/2/04	326
Court Recessed on 2/2/04	327
Trial Resumed 2/3/04; Preliminary Matters	328
More Jurors Qualified	329
INDIVIDUAL VOIR DIRE CONTINUED:	
Juror 51, Jeffrey Eugene Davis	332
Juror 52, Marquis Torell Kendle	343
Juror 53, James David Haley	349
Juror 54, Vickie D. Curry	351
Juror 55, Gloria J. James	356
Juror 56, Barbara Mitchell Arendale	362
Juror 57, John E. Clay	366
Juror 58, Latoya Caniece Carodine	368
Juror 59, Archie Lee Campbell	377
Juror 60, Florence Carr Miers	379
Juror 61, Elsie Rebecca Holifield	381
Juror 63, Chinchona Perfeit Eden	386
Juror 64, Teresa Russell Rawls	396
Juror 67, James Everett Miers	398
Juror 68, Velma R. Young	401

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Juror 70, Irvie Lee Bays	406
Juror 71, Catrena Lee Bennett Carpenter	409
Juror 73, Joe Stanley Brisendine	416
Juror 74, Connie R. Pittman	417
Juror 75, Justin Smith Rabon	422
Juror 76, Anne Elizabeth Austin	423
Juror 77, Kattie Mae M. Wade	434
Juror 79, Glenn Edwin Minyard	437
Juror 81, Sandy Newman, Jr.	439
NOON RECESS on 2/3/04	443
Juror 82, Larry Gene Henry	444
Juror 83, Lynn Glenn Oliver	445
Juror 84, Marvin Abel	451
Juror 85, Herbert Roy Collins	455
Juror 86, John McBee Barbour	462
Juror 87, Martha K. Kent	470
Juror 88, Alexander Robinson	473
Juror 89, Barry Dismuke	478
Juror 90, Byron Allen Minniweather	479
Juror 91, Larry Castle	484
Juror 92, Jason Alan Eskridge	488
Juror 93, Betty D. Herring	495
Juror 94, Linda Faye Weems Campbell	497
Juror 95, Mary V. Bibbs	503
Juror 96, Susan Annette Cottingham	511
Juror 97, Joella J. Mitchell	517
Juror 99, Mark Wilburn Sykes	520

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Juror 100, Michelle A. Knox-Russell	522
Juror 101, Nykeem Dawn Ford	525
Juror 102, David Earl Daves	527
Juror 103, Sonja Kay Lanahan	529
Juror 41A, Joann Murry	532
Juror 53A, Ida Mae Witty	538
Juror 102A, Luther Paul Robinson	545
Juror 8B, Eugene Whitehead	557
Discussion of jurors left - JURY OUT	559
Jury panel given instructions for overnight	562
Another jury venire drawn	564
Court Recessed for the Day on 2/3/04	565
2/4/04; Preliminary Matters	566
Court qualifies more jurors	568
Voir Dire Examination by the Court	594
Juror Ann Austin released - JURY OUT	620
<u>INDIVIDUAL VOIR DIRE OF SECOND PANEL:</u>	
Juror 7, Juanda Cheryl Swanson	621
Juror 36, Rosetta Lou Boyles	623
Juror 1, Rosette Rogers	624
Juror 2, Benton C. Tanner	636
Juror 3, Alisha Marie King	639
Juror 4, Shaunda Kirkwood	641
Juror 5, James E. Stuvee	647
Juror 6, Jessie J. Hearn	655
Juror 8, Jerry M. Crowder	667
Juror 9, Brenda Joyce Allen	669

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Jurors sent to lunch with instructions	675
INDIVIDUAL VOIR DIRE CONTINUED:	
Juror 10, Pearline Ratliff Whaley	676
Juror 11, Linda M. Tharp	682
Juror 12, James Taylor Buckhalter	685
Juror 13, Linda Fleming	687
Juror 14, James Earp Forrest	691
Juror 15, Rhonda M. Townsend	701
Juror 16, Connie Virginia Legg	703
Juror 17, Patrick Young	712
Juror 18, Marlin Kirk Tyler	718
Juror 19, Linda M. Wood	721
Juror 20, Michael Terrell Hudson	729
Juror 21, Carrie A. Flowers	735
Juror 22, Pamela B. Hammond	743
Juror 23, Stanley Booker	744
Juror 24, George Phillips	752
Juror 25, Betty Jane Billingsley	757
Juror 26, Melvin Dewayne Johnson	771
Juror 27, Raymond C. Beckwith	778
Juror 28, Eddie M. Allen	780
Juror 29, Tommie Lee Burt	786
Juror 30, Norma B. Costilow	792
Juror 31, Lashanda L. McChristion	793
Juror 32, Margaret Moore	799
Juror 33, Bobby Youngblood	801
Juror 34, Joyce Ratliff Butts	803

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Juror 35, Donna R. Neal	812
Juror 37, Carolyn S. McCoy	814
Juror 38, Darrell W. O'Bryan	824
Juror 39, Wilma Loyce Kemp	825
Discussion of picking jury - JURY OUT	833
Rest of jury panel released for the night	835
Selection of the Jury - JURORS OUT	836
Jury called to the jury box	855
Rest of 36 jurors released	856
Jury given instructions for the night	857
Jury sent to motel for the night	860
Court puts race and sex of each juror in the record ...	861
Court Recessed for the Day on 2/4/04	863
2/5/04; Conference in Chambers with Juror Booker	864
2/5/04; Court Opened; RESUME INDIVIDUAL VOIR DIRE OF SECOND JURY PANEL	874
Juror 40, Laura Renea Robertson	874
Juror 41, Bobby Steven Lester	877
Juror 42, Robert Shelton Hedgepeth	879
Juror 43, Libby L. Flowers	883
Juror 44, Phillip D. Cross, Jr.	892
Juror 45, Jennifer Marie Beckwith Sumrall	903
Juror 46, Rosa Lynn Alford	905
Juror 47, Bobby Wayne Bell	913
Juror 48, Josephine Powell	918
Juror 49, Jackie D. Austin	932
Juror 50, Sherry Ann H. Richardson	947

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Juror 51, Barbara Williamson	954
Juror 52, Iresha K. Witty Young	957
Juror 53, Christopher Lee Swindoll	970
Juror 54, Christopher Lee Davis	971
Court Qualifies Third Jury Panel	978
Noon Recess on 2/5/04	986
Voir Dire by the Court of Third Panel	986
INDIVIDUAL VOIR DIRE OF THIRD JURY PANEL:	
Juror 55, Marvin W. Halfacre, Jr.	1006
Juror 57, Rickie Wendell Young	1013
Challenges for Cause - JURY OUT	1018
Juror 58, Edwin Glen Carter, Sr.	1020
Juror 59, Bernice Seals McMillian	1022
Juror 65, Judy Palmertree Dees	1029
Juror 64, Jacqueline Frances Stewart	1040
Juror 66, Reba Lane Blaylock	1041
Selection of balance of jury - JURY OUT	1049
Balance of jury called to box	1059
Balance of jury given instructions for the night	1061
Court Recessed on 2/5/04	1063
Trial resumed on 2/6/04; Preliminary Matters	1064
Opening Statement by Mr. Evans	1067
Opening Statement by Mr. Carter	1070
<u>WITNESSES: STATE OF MISSISSIPPI</u>	
SAM JONES, JR.	
Direct Examination by Mr. Evans	1076
Cross-Examination by Mr. Carter	1093

TABLE OF CONTENTS CONTINUED

	<u>Page No.</u>
JOHNNY HARGROVE	
Direct Examination by Mr. Evans	1107
Cross-Examination by Mr. Carter	1123
Redirect Examination by Mr. Evans	1139
Noon Recess on 2/6/04	1141
BARRY ESKRIDGE	
Direct Examination by Mr. Hill	1141
Cross-Examination by Mr. Carter	1147
Redirect Examination by Mr. Hill	1153
DR. STEVEN TIMOTHY HAYNE	
Direct Examination by Mr. Evans	1154
Cross-Examination by Mr. Carter	1189
MELISSA SCHOENE	
Direct Examination by Mr. Evans	1192
Cross-Examination by Mr. Carter	1223
Redirect Examination by Mr. Evans	1234
Recess for day on 2/6/04	1236
Trial resumed on 2/7/04	1237
BILL THORNBURG	
Direct Examination by Mr. Hill	1237
Cross-Examination by Mr. Carter	1254
Redirect Examination by Mr. Hill	1266
DAVID E. BALASH	
Direct Examination by Mr. Hill	1267
Cross-Examination by Mr. Carter	1286
Redirect Examination by Mr. Hill	1295

TABLE OF CONTENTS CONTINUED

Page No.

KATHERINE SNOW

Direct Examination by Mr. Evans	1299
Cross-Examination by Mr. Carter	1303
Redirect Examination by Mr. Evans	1317
Noon Recess on 2/7/04	1318

BENEVA HENRY

Direct Examination by Mr. Evans	1319
Cross-Examination by Mr. Carter	1320
Redirect Examination by Mr. Evans	1325

EDWARD LEE McCHRISTIAN

Direct Examination by Mr. Evans	1326
Cross-Examination by Mr. Carter	1327

DOYLE SIMPSON

Direct Examination by Mr. Evans	1334
Cross-Examination by Mr. Carter	1343
Redirect Examination by Mr. Evans	1352

ELAINE GHOLSTON

Direct Examination by Mr. Evans	1354
Cross-Examination by Mr. Carter	1355
Redirect Examination by Mr. Evans	1363

SHERRY BAILEY

Direct Examination by Mr. Evans	1363
Recess for the Day on 2/7/04	1367
Trial Resumed on 2/8/04	1368

MARY JEANETTE FLEMING

Direct Examination by Mr. Evans	1368
Cross-Examination by Mr. Carter	1371

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Redirect Examination by Mr. Evans	1382
CLEMMIE FLEMING	
Direct Examination by Mr. Evans	1383
Cross-Examination by Mr. Carter	1389
Redirect Examination by Mr. Evans	1401
PATRICIA HALLMON SULLIVAN	
Direct Examination by Mr. Evans	1404
Cross-Examination by Mr. Carter	1409
Redirect Examination by Mr. Evans	1426
Motion for Mistrial (JURY OUT)	1428
Conference with Juror in Chambers	1429
CHARLES "PORKY" COLLINS (Witness Deceased; Read prior transcript to the jury)	
Examination by Mr. Evans of William Blackmon, the reader	1436
Direct Examination read by Mr. Evans	1437
Cross-Examination read by Ms. Ferraro	1447
Redirect Examination by Mr. Evans	1525
Noon Recess on 2/9/04	1535
Conference - JURY OUT	1535
JACK MATTHEWS	
Direct Examination by Mr. Evans	1540
Mr. Matthews reading Defendant's Statement	1555
Continued Direct Examination by Mr. Evans	1577
Cross-Examination by Mr. Carter	1581
Conference - JURY OUT	1586
Continued Cross Examination by Mr. Carter	1589

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Redirect Examination by Mr. Evans	1618
Trial Recessed for the day on 2/9/04	1621
Trial Resumed on 2/10/04	1622
ROXANNE BALLARD	
Direct Examination by Mr. Hill	1622
Cross-Examination by Mr. Carter	1644
Conference - JURY OUT	1646
ODELL HALLMON	
Direct Examination by Mr. Evans	1659
Cross-Examination by Mr. Carter	1661
Redirect Examination by Mr. Evans	1667
JOE EDWARD ANDREWS	
Direct Examination by Mr. Evans	1670
Cross-Examination by Mr. Carter	1688
Redirect Examination by Mr. Evans	1697
Noon Recess on 2/10/04	1702
JOHN HODGES	
Direct Examination by Mr. Hill	1703
STATE OF MISSISSIPPI RESTS	1705
Motions of Defendant - JURY OUT	1706
<u>WITNESSES FOR DEFENDANT:</u>	
ESSA RUTH CAMPBELL	
Direct Examination by Mr. Carter	1709
Cross-Examination by Mr. Evans	1711
Redirect Examination by Mr. Carter	1712
CONNIE MOORE	
Direct Examination by Mr. Carter	1713

TABLE OF CONTENTS CONTINUED

PAGE NO.

RANDY KEENUM

Direct Examination by Mr. Evans 1781

Cross-Examination by Mr. Carter 1782

JACK MATTHEWS

Direct Examination by Mr. Evans 1788

Cross-Examination by Mr. Carter 1791

Redirect Examination by Mr. Evans 1791

BILL THORNBURG

Direct Examination by Mr. Evans 1792

Cross-Examination by Mr. Carter 1793

Redirect Examination by Mr. Evans 1796

STATE RESTS ON REBUTTAL 1797

Bench Conference 1798

Examination of BILL THORNBURG by Mr. de Gruy

at the bench out of the hearing of the jury 1801

Both Sides Finally Rest 1802

Consideration of Instructions - JURY OUT 1803

Instructions Read to the Jury 1814

Final Argument by Mr. Evans 1829

Final Argument by Mr. Carter 1841

Final Argument by Mr. de Gruy 1860

Final Argument by Mr. Evans 1866

Jury Retires to Consider Verdict at 2:55 PM 1872

Jury Returns Verdict at 5:26 PM 1872

Verdict 1873

Jury Polled 1873

Court Recessed for the day on 2/11/04 1875

TABLE OF CONTENTS CONTINUED

	<u>PAGE NO.</u>
Sentencing Phase on 2/12/04	1876
Motion of Defendant - JURY OUT	1876
WITNESSES: STATE (SENTENCING PHASE)	
ROXANNE BALLARD	
Direct Examination by Mr. Evans	1879
CHARLES TARDY	
Direct Examination by Mr. Evans	1881
BENNY RIGBY	
Direct Examination by Mr. Evans	1883
BRYAN RIGBY	
Direct Examination by Mr. Evans	1884
JIMMY LATHAM	
Direct Examination by Mr. Evans	1886
Cross-Examination by Mr. de Gruy	1888
WILLIE GOLDEN	
Direct Examination by Mr. Evans	1888
Cross-Examination by Mr. de Gruy	1890
DALE STEWART	
Direct Examination by Mr. Evans	1891
KATHY PERMINTER	
Direct Examination by Mr. Evans	1893
RALEIGH WOOD	
Direct Examination by Mr. Evans	1895
STATE OF MISSISSIPPI RESTS ON SENTENCING PHASE	1897
WITNESSES: DEFENDANT (SENTENCING PHASE)	
ARCHIE FLOWERS	
Direct Examination by Mr. de Gruy	1897

TABLE OF CONTENTS CONTINUED

PAGE NO.

NELSON FORREST

Direct Examination by Mr. de Gruy 1901

TARRYON DANIELS

Direct Examination by Mr. de Gruy 1904

KITTERY JONES

Direct Examination by Mr. de Gruy 1907

JAMES EVANS AIKEN

Direct Examination by Mr. de Gruy 1908

Voir Dire Examination by Mr. Evans 1918

Continued Direct Examination by Mr. de Gruy 1920

Cross-Examination by Mr. Evans 1928

DEFENDANT RESTS ON SENTENCING PHASE 1931

Consideration of Sentencing Instructions - (JURY OUT). 1932

Sentencing Instructions Read to the Jury 1956

Final Argument by Mr. Evans 1970

Final Argument by Mr. Carter 1977

Final Argument by Mr. de Gruy 1981

Concluding Argument by Mr. Evans 1988

Jury retires to consider sentencing verdict at 2:50 PM 1990

Jury returns with sentencing verdict at 3:49 PM 1991

Verdicts 1992

Jury Polled 1995

Trial Adjourned on 2/12/04 1996

Post Trial Motion Hearing of 3/16/04 1997

Post Trial Motion Hearing Concluded 2017

Court Reporter's Certificate 2018

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
BATSON Hearing (Exhibits not sent to the jury)		
A	(Bench Warrant for Marquis Kendle)	841
B	(Notice of Criminal Disposition on Irie Blueitt)	1053
REGULAR TRIAL EXHIBITS		
S-1	(Small Photo- looking south on Front St.)	1064 1118
S-1A	(Blowup of S-1)	1064 1119
S-2	(Small Photo- Front of Tardy Furniture)	1064 1085
S-2A	(Blowup of S-2)	1064 1085
S-3	(Small Photo- View of Front St. with Liberty and Coast to Coast)	1064 1118
S-3A	(Blowup of S-3)	1064 1119
S-4	(Small Photo- Looking north on Front St.)	1064 1118
S-4A	(Blowup of S-4)	1064 1119
S-5	(Small Photo- Looking west, intersection Front & Carrollton Streets)	1064 1119
S-5A	(Blowup of S-5)	1064 1119
S-6	(Small Photo-back door of Tardy's)	1064 1220

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-7	(Small Photo- freight elevator)	1064
S-8	(Small Photo- outside back alley of Tardy's)	1064 1220
S-9	(Small Photo-Closer view in back alley of Tardy's)	1064 1220
S-10	(Small Photo- inside view of Tardy's)	1064 1090
S-11	(Small Photo- Closer view inside Tardy's)	1064 1112
S-12	(Small Photo- feet of Ms. Rigby)	1064 1112
S-12A	(Blowup of S-12 on board containing 4 photos)	1064 1115
S-13	(Small Photo-Ms. Rigby in front of counter & Mr. Golden)	1064 1088
S-13A	(Blowup of S-13 on board containing 4 photos)	1064 1115
S-14	(Small Photo-side view of Ms. Rigby)	1064 1089
S-14A	(Blowup of S-14 on board containing 4 photos)	1064 1115
S-15	(Small Photo- Ms. Rigby's key chain)	1064 1089
S-15A	(Blowup of S-15 on board containing 4 photos)	1064 1115

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-16	(Small Photo- Robert Golden in front of counter)	1115
S-16A	(Blowup of S-16 on board of 4 photos)	1115
S-17	(Small Photo looking south in front of counter)	1112
S-17A	(Blowup of S-17 on board of 4 photos)	1115
S-18	(Small photo of Robert Golden)	1112
S-18A	(Blowup of S-18 on board of 4 photos)	1115
S-19	(Small photo- Robert Golden)	1087
S-19A	(Blowup of S-19 on board of 4 photos)	1115
S-20	(Small Photo- Ms. Tardy's glasses)	1112
S-20A	(Blowup of S-20 on board of 4 photos)	1115
S-21	(Small Photo- Ms. Tardy's legs showing)	1112
S-21A	(Blowup of S-21 on board of 4 photos)	1115
S-22	(Small Photo- Close-up of Ms. Tardy)	1112

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-22A	(Blowup of S-22 on board of 4 photos)	1064 1115
S-23	(Small Photo- Ms. Tardy side view)	1064 1090
S-23A	(Blowup of S-23 on board of 4 photos)	1064 1115
S-24	(Small Photo- Derrick Stewart's cap & Ms. Tardy)	1064 1112
S-25	(Small Photo- Spot where D. Stewart was, cap)	1064 1112
S-26	(Small Photo- Ms. Rigby & Mr. Golden)	1064 1088
S-27	(Small Photo- inside central counter)	1064
S-28	(Small Photo- inside central counter looking front to right)	1064 1214
S-28A	(Blowup of S-28)	1064 1218
S-29	(Small Photo- open and empty cash drawer)	1064 1214
S-29A	(Blowup of S-29)	1064 1217
S-30	(Small Photo- Top view of front counter)	1064 1112
S-31	(Small Photo- inside view of Tardy's from back looking left)	1064

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-32	(Small Photo- inside 1064 view from center looking right)	
S-33	(Small Photo- inside 1064 view from central counter looking front & left)	
S-34	(Small Photo- gray 1064 bank bag)	1627
S-35	(Small Photo- gray 1064 bank bag)	1627
S-36	(Brown Bag containing 1064 gray money bag w/ receipt book)	1365
S-37	(Videotape of crime scene)1064	
S-38	(Small Photo- safe in 1064 rear office)	1214
S-38A	(Blowup of S-38) 1064	1219
S-39	(Crime Scene Sketch) 1064	1199
S-39A	(Blowup of S-39) 1064	1200
S-40	(Key & Measurement for 1064 Sketch in S-39)	1199
S-40A	(Blowup of S-40, page 1)1064	1200
S-40B	(Blowup of S-40, page 2)1064	1200
S-41	(Small photo, projectile 1064 on floor)	
S-41A	(Large Blowup of S-41) 1064	1218
S-41B	(Smaller Blowup of S-41 1064 on board of 5 photos)	1553

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-42	(Yellow Daily Checkup Sheet)	1064 1630
S-42A	(Blowup of S-42)	1064 1630
S-43	(Curtis Flowers' time card)	1064 1543
S-43A	(Blowup of S-43)	1064 1543
S-44	(Curtis Flowers' check)	1064 1542
S-44A	(Blowup of S-44)	1064 1542
S-45	(Small black & white photo of footwear impressions)	1064 1202
S-45A	(Blowup of S-45)	1064 1203
S-46	(Side view of footwear impressions - photo)	1064 1202
S-46A	(Blowup of S-46 on board)	1064 1203
S-47	(B & W photo of footwear impressions)	1064 1202
S-48	(B & W photo of footwear impressions)	1064 1202
S-49	(B & W photo of footwear impressions)	1064 1202
S-50	(B & W photo of footwear impressions)	1064 1202
S-51	(B & W photo of footwear impressions)	1064 1200
S-52	(Receipt for batteries from Coast to Coast)	1064 1642

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-53	(Small Photo- head of Derrick Stewart)	1064 1183
S-54	(Small Photo- Stewart's head autopsy photo)	1064 1183
S-55	(Photo - Face of Derrick Stewart)	1064 1183
S-56	(Photo - Face of Derrick Stewart)	1064 1183
S-57	(Photo- Face of Bertha Tardy)	1064 1161
S-58	(Photo- Bertha Tardy profile)	1064 1161
S-59	(Photo- Bertha Tardy wound close-up)	1064 1161
S-60	(Photo- Face of Carmen Rigby - Later withdrawn)	1064
S-61	(Photo, Carmen Rigby back of the head)	1064 1178
S-62	(Photo- Carmen Rigby's arm)	1064 1178
S-63	(Photo-close-up of entry wound on Carmen Rigby)	1064 1178
S-64	(Photo- close-up of exit wound on Carmen Rigby)	1064 1178
S-65	(Photo, Robert Golden full face)	1064 1164

TABLE OF CONTENTS CONTINUED

	EXHIBIT	IDENTIFICATION	EVIDENCE
1			
2			
3	S-66 (Photo- Robert Golden	1064	1164
4	left side of face)		
5	S-67 (Photo- Robert Golden	1064	1164
6	right side of face)		
7	S-68 (Photo- Robert Golden	1064	1164
8	from head to foot)		
9	S-69 (Photo- Robert Golden	1064	1164
10	wound to top of head)		
11	S-70 (Photo- Robert Golden	1064	1164
12	close-up of top head wound)		
13	S-71 (Photo- Robert Golden	1064	1164
14	wound to left ear)		
15	S-72 (Autopsy Diagram of	1064	1185
16	Derrick Stewart)		
17	S-73 (Autopsy Diagram of	1064	1163
18	Bertha Tardy)		
19	S-74 (Autopsy Diagram of	1064	1176
20	Carmen Rigby)		
21	S-75 (Autopsy Diagram of	1064	1165
22	Robert Golden)		
23	(S-76 thru S-79 were never placed on an exhibit. The items		
24	of evidence that had these numbers reserved for them were		
25	later marked with different numbers.)		
26	S-79A (Fila Grant Hill II	1064	1252
27	MID shoebox)		
28	S-80 (Small white box,	1064	1282
29	projectile from mattress)		

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-81 (Bullet from Doyle Simpson's post)	1064	1249
S-82 (Bullet Bill Thornburg took from D. Simpson's post)	1064	1247
S-83 (Fired bullet projectile from floor of store)1-B	1064	1208
S-84 (Fired bullet projectile from under love seat)2-B	1064	1208
S-85 (Bullet fragment near Carmen Rigby)	1064	1208
S-86 (Bullet fragment in plastic tube from Ms. Rigby)	1064	1181
S-87 (Fragmented bullet in plastic tube from R. Golden)	1064	1170
S-88 (.380 shell casing CCI casing no. 1)	1064	1207
S-89 (.380 shell casing RP casing no. 2)	1064	1207
S-90 (.380 shell casing CCI casing no. 3)	1064	1207
S-91 (.380 shell casing CCI casing no. 4)	1064	1207
S-92 (.380 shell casing WIN casing no. 5)	1064	1207
S-93 (.380 cartridge 1A live round)	1064	1208
S-94 (Gunshot Residue kit)	1064	1547

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-95	(Photo- yard stick 1064 showing nick in brick column)	
S-95A	(Blowup of S-95 on board 1064 containing 5 photographs)	1553
S-95B	(Bigger blowup of S-95 1064	
S-96	(Small photo - Withdrawn)1064	
S-96A	(Blowup of photo cutting 1064 open mattress)	1553
S-97	(Small photo- close-up 1064 of bullet in mattress)	
S-97A	(Blowup of S-97 on board 1064 containing 5 photos)	1553
S-98	(Small photo- projectile 1064 on floor)	1214
S-98A	(Blowup of S-98 on board 1064 of 5 photos)	1553
S-99	(Photo- side view of 1064 Doyle Simpson's car)	1215
S-99A	(Blowup of S-99 on board 1064 of 3)	1216
S-100	(Photo- rear of Doyle 1064 Simpson's car)	1215
S-100A	(Blowup of S-100 on 1064 board of 3)	1216
S-101	(Photo- glove box of 1064 Doyle Simpson's car)	1215

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-101A (Blowup of S-101 on board of 3)	1064	1216
S-102 (Large map of Winona)	1064	
S-103 (Large map aerial photo showing Angelica's)	1064	
S-104 (Closer view of Angelica	1064	
S-105 (Large Map showing aerial view of downtown)	1064	
S-106 (Large Map of Campbell Street)	1064	
S-107 (Large Map of McNutt Dr.)	1064	
S-108 (Large Winona City Map)	1064	1580
S-109 (Rights Waiver Form July 16, 1996)	1064	1544
S-110 (Rights Waiver Form July 18, 1996)	1064	1554
S-111 (Transcript of taped statement of Defendant)	1064	1554
S-112 (Photo lineup shown to Porky Collins)	1064	
S-113 (Wal-Mart receipt from Porky Collins)	1064	
S-114 (Weed Brothers receipt from Jeanette Fleming)	1064	
S-115 (Certified Transcript of Testimony of Porky Collins)	1064	

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
S-116 (Photo Lineup shown to Katherine Snow)	1064	
S-117 (Map of Winona)	1122	1123
S-118 (Notes made by John Johnson)	1618	
S-119 (Two outer boxes of Fila shoes)	1675	
S-119A (Left outsole of Fila shoe)		1678
S-119B (Right outsole of Fila shoe)		1678
S-120 (Cover Letter of 12/18/03 from Fila)	1676	1677
S-121 (Fila slick catalog sheet)	1676	1678
S-122 (Engineering design of Fila shoe sole)	1676	1678
S-123 (Transparency with black shoe print impression)		1698
S-124 (Statement of Roy Harris)	1767	
S-125 (Sack containing shoes taken off Defendant)	1788	1789
S-125A (Left Shoe)		1790
S-125B (Right Shoe)		1790

TABLE OF CONTENTS CONTINUED

EXHIBIT	IDENTIFICATION	EVIDENCE
D-1	(Interview with Mary Jeanette Fleming)	1377 1746
D-2	(Letter to Mrs. Flowers from Odell Hallmon)	1662
D-3	(Videotape dated 5/7/03 at 11:34 AM of Odell Hallmon)	1755
D-3A	(Cassette that goes with D-3)	1755
D-4	(Videotape dated 5/7/03 at 2:45 PM of Odell Hallmon)	1755
D-4A	(Cassette that goes with D-4)	1755
D-5	(Photo of car)	1801

Pretrial Hearing of April 21, 2003

(ON APRIL 21, 2003, A PRETRIAL HEARING WAS HELD IN VAIDEN, MISSISSIPPI, UNDER HARRISON COUNTY CIRCUIT COURT CAUSE NUMBER B2401-9800960 AND LEE COUNTY CIRCUIT CAUSE NUMBERS CR97-369, CR97-370 AND CR97-371. THE COURT FIRST MET WITH ALL COUNSEL IN CHAMBERS OUT OF THE PRESENCE OF THE COURT REPORTER. PRESENT IN OPEN COURT REPRESENTING THE STATE OF MISSISSIPPI WAS HON. DOUG EVANS. PRESENT REPRESENTING THE DEFENDANT WERE HON. RAY CHARLES CARTER AND HON. STACY FERRARO. THE DEFENDANT WAS ALSO PRESENT.)

BY THE COURT: The first order of business is State of Mississippi versus Curtis Giovanni Flowers. This is Lee County cause number CR97-369, CR97-370, CR97-371. It is also Harrison County number B2401-9800960. This matter is before the Court on remand from the Mississippi Supreme Court. We are here today to do some procedural matters in this case.

The first order of business is that I have been advised by counsel for both sides that they have agreed to a consolidation of these matters. All four cases are now consolidated, and I'm going to issue an order to that effect here shortly.

The venue of the four cases, as I have just stated, three of them the venue was changed from Montgomery County to Lee County. At the hearing of the second case, at the second trial of this case it was determined that the -- we had a hearing in Lee County. Well, let me rephrase that. The first case was tried in Lee County. The second case came on for trial prior to the first case being heard by the

Pretrial Hearing of April 21, 2003

1 Mississippi Supreme Court. A motion for change of
2 venue was made in Lee County. We had, the case came
3 on for the day set for trial. We started the voir
4 dire. After -- there were, as I recall, 104 jurors
5 impaneled. The day before the trial the "Tupelo Daily
6 Journal" ran a lengthy article on the first trial
7 which had happened a year prior to that, to the second
8 trial. That article affected the jury to the extent
9 that some 63 or 64 of the jurors who were individually
10 voir dired determined that they had made, that they
11 could not be fair and impartial. They knew something
12 about the case and had made up their mind about the
13 case. Therefore, on motion of the Defendant it was
14 necessary that the venue of that particular trial be
15 changed to Harrison County where the second trial was
16 held, and there was a conviction there, and it was
17 sent to the Supreme Court. And it has also been
18 remanded for a new trial.

19 They have now all been consolidated, and as I
20 said, I cannot try them -- if they are consolidated,
21 they have got to be in Lee County or they have got to
22 be in Harrison County. This Court is of the opinion
23 that it would be impossible to get a fair and
24 impartial jury for either side in Lee County. I am
25 confident that if this case were taken back up there,
26 the "Daily Journal" would once again run that article,
27 and I think we would not be able to find a jury up
28 there. I do not feel that that is going to be the
29 situation on the coast. I may be proven -- at voir

Pretrial Hearing of April 21, 2003

1 dire or at some point between now and voir dire, it
2 may be proved otherwise to me, and I will have to make
3 such rulings as are necessary as the facts develop.
4 But I am confident because of how far Harrison County
5 is and the lack of communication really between the
6 coast and the central part of the state and the lack
7 of TV or newspaper coverage while this trial was
8 actually going on down there that we will be able to
9 get a trial down there.

10 The Defendant, of course, has reserved the right
11 to file a motion for change of venue out of Harrison
12 County. If that motion is filed, that motion will be
13 held in June, and then I will have to make a
14 determination as to the venue again probably. Well,
15 if the motion is filed, I will have to make another
16 determination as to whether Harrison County is the
17 proper venue. That would be based on the evidence
18 produced at that hearing sometime in June. But as of
19 right now, these cases are consolidated by agreement
20 of the parties, and venue for all four cases is set in
21 Harrison County by order of this Court, this Court
22 exercising its discretionary right to set it in one of
23 the two counties, and my discretion says the best
24 place is Harrison County. So that's where it will be
25 set, at least at this time.

26 The Court has set certain deadlines for certain
27 motions and things to be heard in this matter. I
28 wish, Mr. Evans, in relation to those times that we
29 have set for motions to be filed and discovery to be

Pretrial Hearing of April 21, 2003

1 produced to the Defendant and such other things that
2 we have discussed, if you would prepare me an order
3 consistent with that.

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** And furnish it to me -- well,
6 furnish it to Mr. Carter. Mr. Carter, if you have any
7 objection to the way the order reads, you just let me
8 know, and we will get that in order. But these are
9 procedural matters, so I don't think y'all will have a
10 problem.

11 Okay, a date for trial. We have, counsel and I
12 have discussed this. A trial is subject to two
13 things. It will be subject to the outcome of any
14 motion for change of venue. And second, it would be
15 subject to the availability of courtroom space in
16 Harrison County should that, or wherever at the time
17 we set it for trial. The tentative dates we have set
18 for trial will be-- (To the Court Reporter) Have you
19 got a calendar?

20 (Court Reporter hands the Court a calendar.)

21 **BY THE COURT:** I need this reflected -- well, you
22 don't until I talk to them, you don't need this in the
23 order.

24 Okay, the case is set for trial at this time on
25 August the 18th in the First Judicial District of
26 Harrison County. Are there--

27 **BY MR. EVANS:** Your Honor, as far as the
28 deadlines, at this point what we were discussing as
29 far as discovery, opposing counsel was going to

Pretrial Hearing of April 21, 2003

1 attempt to get the discovery from the attorneys that
2 have handled this case in the past. But I think we
3 probably do need to at least put a tentative date in
4 there. I would suggest maybe May 1st for discovery
5 from the State. That would give us a chance for them
6 to get the discovery and then us to look over it and
7 make sure that everything has been furnished. And
8 then possibly by the end of May, that would give them
9 about thirty days to have any reciprocal discovery
10 back to us with the understanding that anything
11 additional that would come in could be furnished at a
12 later time.

13 **BY THE COURT:** Okay. You can set those dates.
14 Mr. Carter is going to get me an order tomorrow
15 ordering the previous attorneys in this case to
16 furnish whatever discovery they have to him on or
17 before May 1st. Is there anything else needs to be
18 addressed?

19 **BY MR. EVANS:** Your Honor, just procedurally, I
20 am assuming by the consolidation that all four causes
21 will now be under this Harrison County cause number.
22 Is that correct?

23 **BY THE COURT:** Depending on what the clerk does,
24 yes. For now, for purposes of my order, yes, they
25 will all be under that cause number.

26 **BY MR. EVANS:** As far as any orders that we
27 prepare?

28 **BY THE COURT:** Yes. Anything else?

29 **BY MR. CARTER:** No, not from me.

Pretrial Hearing of April 21, 2003

1 **BY THE COURT:** Okay, that's all for this hearing.
2 Y'all want to do something with this order here?

3 **BY MR. EVANS:** Yes, sir.

4 COUNSEL APPROACH THE BENCH AND SIGN ORDER.

5 HEARING OF APRIL 21, 2003 CONCLUDED.
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Pretrial Hearing of 6/11/03

(ON JUNE 11, 2003, PRETRIAL MOTION HEARING WAS HELD IN WINONA, MISSISSIPPI, WITH THE PROCEEDING BEING FIRST IN HARRISON COUNTY CIRCUIT CAUSE NUMBER B2401-98000960 WHICH DURING THE HEARING BECAME MONTGOMERY COUNTY CIRCUIT COURT CAUSE NUMBER 2003-0071-CR. PRESENT REPRESENTING THE STATE WERE HON. DOUG EVANS AND HON. CLYDE HILL. PRESENT REPRESENTING THE DEFENDANT WERE HON. RAY CHARLES CARTER AND HON. STACY FERRARO. THE DEFENDANT WAS ALSO PRESENT.)

BY THE COURT: We have got several matters that are going to require the Court's attention today. First though among them is a motion filed by the Defendant to return the venue of this case to Montgomery County. Mr. Carter, I will hear from you on that.

BY MR. CARTER: Yes, sir. May it please the Court, Your Honor, we are here today on a motion asserting venue in Montgomery County, Mississippi. For the record, as the Court knows, Mr. Flowers was indicted in CR97-369, CR97-370, CR97-371, CR97-372 by the Montgomery County grand jury on March 21, 1997, on the charge of capital murder. He was arraigned on March 25, 1997.

There was a motion for change of venue filed, I believe, initially by Mr. Gilmore that moved the trial of Ms. Tardy, I believe, to Lee County.

BY THE COURT: Moved them all there.

BY MR. CARTER: I'm sorry?

BY THE COURT: Moved all of them there.

BY MR. CARTER: All of them to Lee County. Then

Pretrial Hearing of 6/11/03

1 there was a motion by Mr. Chokwe Lumumba that moved
2 the trials to Harrison County.

3 **BY THE COURT:** No, moved the second trial to
4 Harrison County.

5 **BY MR. CARTER:** The second trial to Harrison
6 County. There was an appeal in both of those cases
7 and a reversal in both. And we are before the Court
8 today arguing this motion to assert venue in
9 Montgomery County based on State of Mississippi versus
10 Caldwell whereas this issue from our perspective has
11 been dealt with before. In that particular case,
12 Bobby Caldwell was indicted for capital murder in
13 Panola County. Fearing prejudicial publicity at the
14 time of the crime, Caldwell was successful in having
15 venue changed to DeSoto County. The resulting trial
16 in DeSoto County resulted in a conviction and
17 imposition of the death penalty. The appeal to the
18 Supreme Court affirmed the death sentence by a vote of
19 an evenly divided court. And that particular case got
20 reversed by the United States Supreme Court because of
21 prosecutorial misconduct in the closing argument.

22 In Caldwell our Supreme Court says that Article
23 3, Section 26 of the Mississippi Constitution mandates
24 more or less that an accused in a criminal case is
25 entitled to a public trial by an impartial jury of the
26 county where the offense occurred, unless a waiver of
27 those rights have occurred. And even if a waiver took
28 place, which it did on two prior occasions, in the
29 event of an appellate review, the slate is wiped clean

Pretrial Hearing of 6/11/03

1 thus allowing the defendant to invoke his rights, his
2 constitutional right to a trial where the crime
3 occurred. The crimes occurred here in Montgomery
4 County, Mississippi. And our Supreme Court and the
5 United States Supreme Court, more particularly the
6 United States Supreme Court, I think, here says that
7 the right to be tried where the crime occurred is
8 tantamount or on equal footing with the privilege
9 against self-incrimination and the right to counsel.

10 And we argue to the Court that this crime
11 occurred in 1996, in March, I believe; that certainly
12 there was substantial pretrial publicity at that time,
13 and to move the trial to another county certainly was
14 probably in order at that time. Since that time, it
15 is our position that pretrial publicity has subsided,
16 or certainly there has been an opportunity for
17 emotions and feelings to cool down. And because of
18 that, the time that has elapsed and the Defendant's
19 right to be tried in the county where the crime
20 occurred, that venue is proper here in Montgomery
21 County, Mississippi.

22 **BY THE COURT:** Mr. Evans.

23 **BY MR. EVANS:** Very briefly, Your Honor, on that
24 motion. Specifically referring to the Caldwell case,
25 in that particular case the Supreme Court said that
26 venue was proper in Panola County because, in fact, of
27 the particular circumstances of that case. The fact
28 that it had been a time period of six years, I
29 believe, and that the defendant believed that adverse

Pretrial Hearing of 6/11/03

1 publicity had subsided. In this particular case, I
2 find that that is not the facts. As a matter of fact,
3 for the record there have been two trials where this
4 Defendant has been convicted. He has been given the
5 death penalty both times. Both of those instances the
6 local newspaper and also some state papers in this
7 area that cover this area have gone into great detail
8 about the specifics of what was proven that he did;
9 the fact that every time there is any indication of a
10 hearing the news is covered here in this case.

11 Now if the defense is saying that they don't care
12 that everybody in the county knows the facts of the
13 case, then I think Caldwell may apply. But I don't
14 think there is any way to ever get a jury in this
15 county without every person sitting on the jury being
16 aware of the facts of the case.

17 **BY THE COURT:** Anything else, Mr. Carter?

18 **BY MR. CARTER:** Nothing except, Your Honor, to
19 say that we, while we might disagree slightly with
20 Mr. Evans, we are certainly aware of the circumstances
21 here and perhaps the danger of having a trial here if
22 such exists. However, the Defendant has a
23 constitutional right to be tried here, and that's what
24 he desires.

25 **BY THE COURT:** I think you are correct,
26 Mr. Carter. Having examined Caldwell at length, the
27 Constitution of this state allows or requires that a
28 defendant be tried in the county in which the event
29 occurred or the crime occurred unless he waives that

Pretrial Hearing of 6/11/03

1 right. In this case Mr. Flowers waived that right on
2 all four cases when this case began. He did so -- it
3 was by agreement of all parties, but it was also at
4 Mr. Flowers' consent. It was also with the consent of
5 the Court who agreed with all the parties at that time
6 that six years ago when this case came up that it was
7 unlikely that you could find a fair and impartial jury
8 in this county because of the feelings in the
9 community and the publicity and the media coverage of
10 this event at that particular time. So the case was
11 transferred to Lee County.

12 Upon trial, upon the attempt to try the second
13 case over a year after the first case in Lee County,
14 the publicity was such up there and the feelings were
15 such in Lee County that we couldn't even try it up
16 there. So it had to go to Harrison County. In
17 Harrison County, I found on the panel, on the venire
18 that we had in Harrison County only one person on that
19 venire had ever heard of the case. So we got a panel
20 down that there that knew nothing about the case, at
21 least according to their answers on voir dire.

22 There has been nothing presented to this Court
23 since that time or any observations by this Court
24 since that time that thinks that that situation is
25 changed at all in Montgomery County. However, that is
26 not the test. The Defendant has a right to be tried
27 here regardless of those circumstances if that's what
28 he so desires. It was up to him to make the motion to
29 change the venue, and Caldwell requires that upon a

Pretrial Hearing of 6/11/03

1 reversal when it comes back, we start anew. So if he
2 desires -- he could keep it in Harrison County where
3 venue is at this point in time, or on simply by
4 requesting it, it can come back to Montgomery County,
5 and the Court has no discretion in that matter
6 whatsoever if that's his desire.

7 Now, what the Court has to do though is to make
8 sure that the request by Mr. Flowers is based on
9 informed consent and is a request that has, where he
10 has full knowledge of the facts. So I have some
11 questions for you, Mr. Carter. You have an
12 investigator in your office; is that correct?

13 **BY MR. CARTER:** Yes, sir.

14 **BY THE COURT:** Has any, have you or the
15 investigator or anybody in your office come to
16 Montgomery County and made investigation as to whether
17 or not you feel the situation has changed from what it
18 was originally to the point to where he can get a fair
19 and impartial trial here?

20 **BY MR. CARTER:** Your Honor, to answer that
21 question specifically, my co-counsel, Ms. Ferraro is
22 also, I guess to some extent, our investigator too.
23 She is both. And she is familiar with this area, and
24 she has had discussions with people. And based on
25 those discussions, she believes that he could probably
26 get a fair trial here.

27 **BY THE COURT:** Ms. Ferraro, is that correct?

28 **BY MS. FERRARO:** Yes, Your Honor.

29 **BY THE COURT:** Okay. You have talked to members

Pretrial Hearing of 6/11/03

1 of this community?

2 BY MS. FERRARO: Yes, sir.

3 BY THE COURT: Okay. Have you as counsel and
4 investigator -- well, you are counsel too. Have y'all
5 all discussed this with, Mr. Flowers?

6 BY MR. CARTER: Yes, sir.

7 BY MS. FERRARO: Yes, sir.

8 BY THE COURT: Have you told him what the result
9 of your investigation was?

10 BY MS. FERRARO: Yes, sir.

11 BY THE COURT: Is it Mr. Flowers' desire after
12 discussing it with you, to have the venue here in this
13 case?

14 BY MR. CARTER: Yes, sir.

15 BY MS. FERRARO: Yes, sir.

16 BY THE COURT: Okay. Mr. Flowers, then I have
17 some questions of you. Have you had discussion -- you
18 can keep your seat. Have you had discussions with
19 your family or anything in regard to this case about
20 whether or not you can get a fair and impartial trial
21 here?

22 BY THE DEFENDANT: Yes, sir.

23 BY THE COURT: All right, have you discussed this
24 matter with your attorneys?

25 BY THE DEFENDANT: Yes, sir.

26 BY THE COURT: You realize what the situation was
27 six years ago when this case came up and when you
28 decided that you wanted it moved? Is that right?

29 BY THE DEFENDANT: Yes, sir.

Pretrial Hearing of 6/11/03

1 **BY THE COURT:** With all that knowledge that you
2 have now of what happened in the past and what your
3 attorneys have talked to you about and what your
4 family has discussed with you, is it your desire that
5 this case be tried in Montgomery County?

6 **BY THE DEFENDANT:** Yes, sir.

7 **BY THE COURT:** Okay. Then the venue for this
8 case is set, is returned to Montgomery County.
9 Ms. Halfacre, we are going to -- this case has now
10 been consolidated. We are going to do something about
11 getting you -- I don't know that you have the
12 consolidation order. That is probably in Harrison
13 County. Is that right?

14 **BY MR. EVANS:** I imagine it is.

15 **BY THE COURT:** We will get orders to you. You
16 are to set up a new file in this matter that will
17 include all four indictments in it. It will have its
18 own, it will have a new cause number. Everything that
19 is to be filed in regard to this case will be filed in
20 that cause number.

21 I notice today, Mr. Carter, that I got a notice
22 from you that you are adopting all the motions that
23 have been filed in the other cases. You are entitled
24 to do that, but we are not going to do it that way.
25 You must go through those files and find which of
26 those motions you actually want to file. I don't care
27 whether you redraw them or not or just make copies of
28 them, but they have to come, they have to be in this
29 new file. I'm not going to consider any motions in

Pretrial Hearing of 6/11/03

1 this matter that are not under this new cause number.

2 **BY MR. CARTER:** Okay.

3 **BY THE COURT:** This case was originally set here
4 two or three weeks ago for August. It's not going to
5 be possible for us to try it at that time due to this
6 Court's schedule, plus I understand that y'all have a
7 capital case that is already set and pending at that
8 time. Is that correct?

9 **BY MR. CARTER:** Yes, sir. I have got one
10 actually pending next month.

11 **BY THE COURT:** Okay.

12 **BY MR. EVANS:** Your Honor, I don't know if the
13 Court has gotten it yet. I have just been given right
14 before we sat down a motion from the defense for a
15 continuance and extension of the motion deadlines.

16 **BY THE COURT:** I do. I am looking at it right
17 now. I need your calendar.

18 (Court Reporter hands the Court a calendar.)

19 **BY THE COURT:** I anticipate that is it is going
20 to take a substantial number of jurors in order to
21 seat a jury in this case. Because of that, I think
22 the voir dire, I think there is going to be a lot of
23 individual voir dire at least as to folks knowing
24 what -- there are going to be a lot of people saying
25 they know what this case is about, and we are going to
26 have to talk to them about that individually, and that
27 is going to take a while. So I'm going to allocate
28 two weeks for this case. I think we can do it in that
29 period of time. The first one took four days, and the

Pretrial Hearing of 6/11/03

1 second took eleven, I think is right, eleven or
2 twelve. But even with the extensive voir dire, I
3 think once we get into the case, I think we can do it
4 in two weeks.

5 I regret of having to set this case so far out,
6 but because of this development that we have had here
7 today, I just, I have no choice with the Court's other
8 schedule and the schedule of the attorneys involved in
9 this matter.

10 (Pause while the Court looks at the calendar and
11 consults with the court reporter.)

12 **BY THE COURT:** I propose to set this case
13 February the 2nd, 2004.

14 **BY MR. CARTER:** Fine with us, Your Honor.

15 **BY THE COURT:** Okay, I'm going to enter an order
16 before I leave here today, so if any other judge says,
17 I'm getting ready to set your case, you will have mine
18 first. Okay?

19 **BY MR. CARTER:** Yes, sir.

20 **BY THE COURT:** All right. So that effectively
21 gives you your continuance from the other time. Let's
22 talk about your deadlines on your motions. We have
23 got some time now. How much time will it take y'all
24 to file, I mean to get this done?

25 **BY MR. EVANS:** Your Honor, I would like to make a
26 record of what we have done so far just so everything
27 is clear in the record. What the State has done is
28 furnished basically this packet that I'm holding up to
29 the defense. This is every cover sheet of every

Pretrial Hearing of 6/11/03

1 discovery that has ever been filed in this case. Now
2 at the time we did this the Court had entered an order
3 for previous counsel to give the attorneys that are
4 representing the Defendant now all the old discovery.
5 I understand for the first time from this motion today
6 that now they have received five boxes of discovery
7 from Chokwe Lumumba, four boxes of discovery from
8 Keith Ball, and six boxes of court files from the
9 Supreme Court.

10 What I have proposed, and I think Defense Counsel
11 agrees with this, they are going to take the discovery
12 that they have been furnished from previous counsels,
13 look at the cover sheets where we have furnished all
14 the discovery, and then meet with us, go through our
15 file and see if there is anything in the file or in
16 the cover sheets that they haven't already been
17 discovered. So I think the only time period we need
18 in there is enough time for them to look through the
19 boxes. I would like to get it as short as possible so
20 we know there are no discovery problems, and then we
21 can set up a time that we can get together and go
22 through and make sure that they have got everything.

23 **BY THE COURT:** While I'm thinking about it too,
24 did you ever get that order filed on this discovery?
25 You have gotten it now, but I want it in this new
26 file, the one that I gave you. Did you file it with
27 Harrison county?

28 **BY MR. CARTER:** I am pretty sure I did, but I
29 have a copy I can file here too, Your Honor.

Pretrial Hearing of 6/11/03

1 **BY THE COURT:** Okay, you can file the copy, and
2 we will see about getting the original. Okay, anytime
3 I give y'all an order now, I want it in the file. You
4 can keep a copy, but I want the original in the file.
5 Okay, what about that?

6 **BY MR. CARTER:** Well, that sounds good. I have
7 started reading it, Your Honor. It's a lot of
8 material, and as a matter of fact, I just finally got
9 the file from Mr. Lumumba this Monday. I finally
10 caught up with him, and it seems there are a lot of
11 tapes, audios and videos, and I guess the most
12 important part of the discovery is what I just got
13 from him. So we are reading it. I have a trial
14 January the -- I mean July the 14th. That's the only
15 thing that is occupying some of my time now, but I'm
16 finding time to read through it. So certainly after
17 that, I mean we should have--

18 **BY THE COURT:** What about July 31st?

19 **BY MR. CARTER:** Your Honor, July 31st. Could you
20 give me another week or so after--

21 **BY THE COURT:** Okay, August 15th.

22 **BY MR. CARTER:** August 15th is good.

23 **BY THE COURT:** Okay.

24 **BY MR. CARTER:** Now that's -- August 15th is
25 which date? Is that the motion deadline date, or that
26 is the date to get with Mr. Evans?

27 **BY THE COURT:** By then I'm going to expect you to
28 have gone through the discovery that you have.
29 Between August the 15th and August the 31st I expect

Pretrial Hearing of 6/11/03

1 you to have met with Mr. Evans to make sure that you
2 have gotten everything and that you have seen
3 everything that he might have at his office. I would
4 like some acknowledgment from the both of you after
5 that, that that has been done in writing in the file
6 so that I have got some record of that.

7 **BY MR. CARTER:** Okay.

8 **BY THE COURT:** Y'all may surprise me, but I don't
9 think you can think up many more motions that I
10 haven't seen in this case.

11 **BY MR. CARTER:** I agree.

12 **BY THE COURT:** So I require that the motion
13 deadline be October the 1st. I don't even know what
14 day that is, but if that happens to be a Sunday, just
15 do it the Friday before.

16 **BY MR. CARTER:** Okay. Thank you.

17 **BY THE COURT:** I also require reciprocal
18 discovery by October 1st too. Is that all right, Mr.
19 Evans?

20 **BY MR. EVANS:** Yes, sir.

21 **BY MR. CARTER:** I think that's got it.

22 **BY THE COURT:** Okay. Anything else that we need
23 to tend to today?

24 **BY MR. CARTER:** Not from us, Your Honor.

25 **BY THE COURT:** These are not just -- I'm not
26 setting these deadlines just to hear my voice. I
27 expect them to be complied with so we can get this
28 case on to culmination.

29 **BY MR. CARTER:** Yes, sir.

Pretrial Hearing of 6/11/03

1 **BY THE COURT:** All right. With nothing further
2 before this Court, the Court is adjourned.

3 HEARING OF JUNE 11, 2003 WAS ADJOURNED.
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Motion Hearing of 12/10/03

1 (ON DECEMBER 10, 2003, THIS MATTER CAME ON FOR
2 MOTION HEARING IN WINONA, MISSISSIPPI, WITH THE DEFENDANT
3 PRESENT AND WITH THE FOLLOWING COUNSEL PRESENT: HON. DOUG
4 EVANS AND HON. CLYDE HILL PRESENT REPRESENTING THE STATE AND
5 HON. RAY CHARLES CARTER AND HON. STACY FERRARO FOR THE
6 DEFENDANT.)

7 **BY THE COURT:** We are here on motions on the
8 Flowers case. Which ones are you going to call up?

9 **BY MR. CARTER:** Your Honor, I have a whole litany
10 of them. Most of them the Court has heard before. I
11 brought copies just in case, to make it easier, I
12 guess, for everybody to recognize which ones. All of
13 them will be very brief although it is a quite a few.

14 **BY THE COURT:** Okay.

15 **BY MR. CARTER:** Your Honor, the first one we have
16 is a Motion to Preclude Admission of Gruesome and
17 Highly Prejudicial Color Photographs. And this has
18 been argued before, and I understand the Court may not
19 be able to make a decision until they are actually
20 presented. But I guess I just want to point out to
21 the Court and to the prosecution that we intend to
22 object to those, and if the Court can make some kind
23 of ruling at this point, I hope the Court will do it.

24 **BY THE COURT:** I don't have any idea what they
25 are going -- I know what they have introduced before,
26 but I don't know what they intend to introduce at this
27 time. And until I know that, I can't rule on that.
28 The law certainly does not allow for gruesome or
29 highly prejudicial photographs that are unnecessary to

Motion Hearing of 12/10/03

1 the proof, although the fact that they are gruesome
2 and highly prejudicial does not preclude them. It
3 depends on the situation. There are certain of the
4 photographs that I have seen that I am certain will
5 not be allowed into evidence just like they weren't at
6 the other trials, but some of them will be, and I will
7 just have to take that as -- you will have to make
8 those objections at that time, and I will rule on them
9 at that time.

10 **BY MR. CARTER:** Okay. Your Honor, the next
11 motion is a Motion for Discovery--

12 **BY THE COURT:** -- Let me say one thing further
13 about that though. There are, because of the
14 situation that we are in, before we were trying it one
15 at a time; we are now trying all four at the time, so
16 that may change some of my rulings as to what is
17 admissible and what is not because they would be
18 relevant under 403 now where they were not before.
19 Okay.

20 **BY MR. CARTER:** Yes, sir. The next motion is a
21 Motion for Discovery of Information Regarding State's
22 Experts. This has been filed and argued before, but
23 my concern is that at this point that if there is some
24 information we don't have regarding the Fila expert --
25 as I understand from talking to Mr. Evans, in the
26 former trials he didn't actually have a person from
27 the Fila Corporation to actually show up. But this
28 time I think he will have someone to show up, and if
29 there is a report or some information that he can give

Motion Hearing of 12/10/03

1 me regarding this person, I would like to receive it
2 and get an agreement from Mr. Evans that he will
3 present it at some point before trial. And this
4 motion just pretty much goes to that from my
5 perspective.

6 **BY THE COURT:** Okay, as to all the other experts
7 that have already testified a couple of times, you
8 have got all that information; is that correct?

9 **BY MR. CARTER:** Yes, sir.

10 **BY THE COURT:** The only one you are concerned
11 about is the Fila?

12 **BY MR. CARTER:** Yes, sir, and if they have some
13 additional information from some expert that already
14 exists that I don't have.

15 **BY THE COURT:** Yeah, they are required to
16 supplement if they have got additional information
17 from the experts that have already testified. The
18 Fila one would be a new one, if there is one.

19 **BY MR. EVANS:** Yes, sir, Your Honor, which we do
20 not have at this point. What I have advised opposing
21 counsel is that that we are either going to do one of
22 two things in this case. We are either going to get
23 the other information that we need or the original
24 type shoes, or Joe Andrews is going to go to Fila and
25 actually look at the exhibits, or someone from Fila is
26 going to come down. And Joe is in the process of
27 working with them and figuring out the most feasible
28 way of doing it.

29 **BY THE COURT:** Okay, in light of the fact that we

Motion Hearing of 12/10/03

1 have got this thing set in February, Joe needs to go
2 ahead and get that worked out. If he is going, he
3 needs to go; if not, we need to get a report from
4 those people so we can -- I would like to have that
5 done where we can have that report by the first of the
6 year. That will give you at least -- well, is that
7 soon enough?

8 **BY MR. EVANS:** I don't anticipate any new
9 evidence. There may be a different pair of shoes
10 introduced, something like that, but I don't -- at
11 this point I don't anticipate any new evidence. It
12 may be that we do it in a different form, but I think
13 it is going to be the same--

14 **BY THE COURT:** --same evidence using a different
15 expert?

16 **BY MR. EVANS:** Yes, sir.

17 **BY THE COURT:** Or a different--

18 **BY MR. EVANS:** Different means.

19 **BY THE COURT:** Consistent with the ruling of the
20 Supreme Court in Flowers II; right?

21 **BY MR. EVANS:** Yes, sir.

22 **BY THE COURT:** Do you think we can get that by
23 the first of the year?

24 **BY MR. EVANS:** Should be able to.

25 **BY THE COURT:** Okay, well, we are going to work
26 on that. You will be furnished that.

27 **BY MR. CARTER:** Yes, sir. The next motion, Your
28 Honor, is a Motion for Discovery of Information
29 Necessary to Receive a Fair Trial. This motion also

Motion Hearing of 12/10/03

1 was filed before, and it's essentially asking for
2 discovery which has been asked before and probably has
3 been provided. Mr. Evans and I met a couple of times
4 and exchanged pretty much what we had. I just want to
5 make sure that this will continue to take place. If,
6 in fact, the State gets additional evidence, that they
7 will provide it to us. And I have no reason to
8 suspect that they won't, but--

9 **BY THE COURT:** Okay, well, there have been two
10 trials. Discovery has been furnished to numerous
11 lawyers in this case, and I assume been furnished to
12 you. So you have all that stuff or you have certainly
13 got access to it.

14 **BY MR. CARTER:** Yes, sir.

15 **BY THE COURT:** He is required under the law to
16 supplement discovery, so if he has got anything that
17 has come up since those trials or since he has
18 furnished anything to you, he is required to furnish
19 that to you. You might want to make a statement as to
20 whether that has occurred, Mr. Evans.

21 **BY MR. EVANS:** Yes, sir. The only thing that has
22 occurred since the last trial -- we have one
23 additional witness, Odell Hallmon. We have furnished
24 in discovery that he is prepared to testify that the
25 Defendant asked him to lie in the first trial and that
26 the Defendant made admissions to him. All of that has
27 been furnished in discovery. That is the only
28 additional witness at this point that we are aware of,
29 and all of that has been furnished for a pretty good

Motion Hearing of 12/10/03

1 while.

2 **BY THE COURT:** Okay.

3 **BY MR. CARTER:** The next motion, Your Honor, is a
4 Motion for Notice of Aggravating Circumstances and for
5 Disclosure of Evidence Supporting Mitigating
6 Circumstances. From my perusal of the file, I believe
7 that Mr. Evans disclosed in both trials the
8 aggravating circumstances, and unless there is some
9 additional ones, I think we have this. But if there
10 are other aggravating circumstances that he wished to
11 extend, I hope he will, the Court will order him to
12 supply that to me.

13 **BY THE COURT:** Well, I think the aggravating
14 circumstances are going to be the same as they were.

15 **BY MR. EVANS:** They would be the same, but that
16 is something that is not discoverable. That is
17 something that would only be available really after
18 the trial when the Court determines which ones are
19 appropriate. And we have furnished in the past two
20 trials aggravating circumstances even though we didn't
21 have to, and I don't anticipate or know of any other
22 aggravating circumstances other than the ones in the
23 past that we have furnished.

24 **BY THE COURT:** And the same ones, the same
25 aggravating circumstances were used at each trial; is
26 that correct?

27 **BY MR. EVANS:** Yes, sir. That's correct.

28 **BY THE COURT:** Well, I think you have been
29 furnished that.

Motion Hearing of 12/10/03

1 **BY MR. CARTER:** The next motion, Your Honor--

2 **BY THE COURT:** -- I don't know of anything under
3 the statute additionally that could be on aggravating
4 circumstances.

5 **BY MR. EVANS:** No, sir.

6 **BY THE COURT:** I mean I don't think there are any
7 other statutory aggravating circumstances that would
8 apply to this case other than what has been used in
9 the first two trials.

10 **BY MR. EVANS:** I don't know of any.

11 **BY THE COURT:** Okay.

12 **BY MR. CARTER:** The next motion, Your Honor, is a
13 Motion for Individual Sequestered Voir Dire. As the
14 Court knows, this is the third trial involving
15 Mr. Flowers, and there has been substantial pretrial
16 publicity about this case, particularly in this area.
17 I will be surprised if we could find a single person
18 who hasn't heard about this case, and I would be
19 suspicious if likewise we found one that hasn't heard
20 of it. Talking to the whole group as a whole often
21 places prospective jurors in a situation where they
22 are concerned about their answers, trying to conform
23 their answers to prior answers that other people have
24 given. It often brings about situations where there
25 might be some kind of embarrassment if they set forth
26 certain facts that they consider private. Group voir
27 dire just creates a situation where jurors tend to not
28 be as open and honest as you would like for them to
29 be. And considering this is a capital murder trial

Motion Hearing of 12/10/03

1 and this is the third time he is being tried
2 essentially, I just think that we need to be able to
3 talk to the jurors individually, at least in a panel
4 of four, to make sure that they are being honest and
5 that we can fully decipher and determine who can be
6 fair and impartial.

7 **BY MR. EVANS:** Your Honor, the Court has
8 overruled this in the past, and it's our view that it
9 is not necessary and there is nothing in the law that
10 says that individual voir dire is necessary. As far
11 as the publicity, I think this Court will remember
12 that at the hearing where opposing counsel asked that
13 this case be tried in this county, they said that they
14 had polled the people in the county, and it was their
15 view that there was no pretrial publicity out there
16 now that would be harmful to the Defendant and he
17 could get a fair trial here in this county.

18 I agree that there is not going to be anybody in
19 this county that hasn't heard about the case, and if
20 they want it tried here in this county, any juror that
21 we put on there is going to have heard about the case.
22 So there is only one question that is still relevant
23 there. Having heard about all of the evidence in the
24 case, which every fact that has come out in both
25 trials has been in the news, can you be fair and
26 impartial and disregard what you have heard.

27 So individual voir dire cannot be relevant in
28 that issue because there is not going to be any jurors
29 that haven't heard all the facts of the case.

Motion Hearing of 12/10/03

1 **BY THE COURT:** Well, there are certain parts of
2 the voir dire which are general voir dire including
3 the death qualification that can be done to the panel
4 as a whole. I have done that in the past, and I see
5 no reason why it would not work in this case. Those
6 answers to those type of questions do not affect the
7 rest of the jury panel, or at least not in my
8 experience. However, this case has been tried twice.
9 There has been substantial publicity about it. I
10 agree with y'all. I'm going to be surprised if we can
11 find anybody that said they haven't ever heard about
12 it, but that is possible too. In any event, on the
13 question of whether or not they have heard about the
14 case and whether or not they can be fair and impartial
15 based on what they have heard, set aside what they
16 have heard or what they know and be a fair and
17 impartial juror is an issue that of necessity, because
18 this case is being tried in this county, would require
19 individual voir dire, and I'm going to do that. And
20 the fact is we have done it in the other two cases.
21 We did it in Tupelo where there were some people in
22 Tupelo, in fact, who did know something about the
23 case. As I recall, there was only one in Gulfport
24 that did, and I think we did individual on that
25 particular person. But other than that, we always do
26 that, and as the situation about publicity, community
27 knowledge and things like that, that will be
28 individual, that will be individual voir dire on those
29 persons who say they know something about it, which

Motion Hearing of 12/10/03

1 may mean, of course, that we have to do individual
2 voir dire on the entire panel.

3 Now what we are going to probably do on that is
4 after we do individual voir dire on say 50 or 60
5 folks, then we may try to go ahead and get a jury and
6 then do the individual voir dire on the rest of them
7 when we see what we have got after we do the first
8 fifty. So we are going to do it in a panel like you
9 are talking about. It probably -- I reserve the right
10 to decide how big that panel is going to be. Okay.
11 So I guess that motion is granted in part.

12 **BY MR. CARTER:** The next one, Your Honor, I
13 believe is--

14 **BY THE COURT:** --Well, the next one is Motion for
15 Individual Voir Dire. I think that is just what I
16 said. We are not going to sequester them. I think
17 that calls for, that last motion would call for
18 sequestering them. We are not going to sequester
19 people in voir dire. I'm not going to do that. But I
20 will individual voir dire on them on the issues that I
21 have just related and on any other issue that comes up
22 during voir dire that I determine that needs
23 individual voir dire or that y'all -- and that I see
24 or y'all see and I determine that that is correct, we
25 will individual voir dire as necessary. On the
26 factual stuff, I think it is imperative that we do
27 that. Okay.

28 **BY MR. CARTER:** The next motion, Your Honor, is a
29 Motion to Suppress Witness Statements. We have a

Motion Hearing of 12/10/03

1 Frederick Veal in this instance, a Maurice Hawkins.

2 BY THE COURT: Excuse me just a minute. Are you
3 going to use them?

4 BY MR. EVANS: I don't know yet, Your Honor.

5 BY THE COURT: Okay, all right.

6 BY MR. CARTER: We have a Frederick Veal, Maurice
7 Hawkins, and an Odell Hallmon who we anticipate,
8 although they have given more than one account of what
9 happened; they have said that Mr. Flowers confessed to
10 them, I believe, on one hand and on another hand
11 recanted that. And I move that the Court will
12 suppress the statements given by these persons because
13 this is a capital murder trial, and if there is a
14 conviction, it should be based on reliable and
15 trustworthy evidence and not on witnesses who lack
16 credibility.

17 BY MR. EVANS: Basically in response to that,
18 starting with Odell Hallmon, that is a defense witness
19 that he put on in Gulfport who has given a videotaped
20 interview stating that he was asked by this Defendant
21 and a previous attorney for the Defendant to lie, told
22 what to lie to, and that he did, in fact, do it and
23 why he lied for him. That, I think, is definitely
24 relevant. It goes to the whole issue of the case;
25 plus the fact that he also admitted to him -- and I
26 won't go into all of the admissions at this point, but
27 he admitted to him parts of what he did. All of that
28 would be relevant.

29 As to the first two, I have not made a decision

Motion Hearing of 12/10/03

1 on that, but it goes even further in that is that we
2 have taped interviews from both of them that after the
3 first trial, they were carried by defense attorneys to
4 Jackson, put up in motels, furnished money and drugs
5 to give a tape that they did. So depending on the
6 facts of the case and what comes up, all of that may
7 be relevant; it may not be. But at this point we are
8 not prepared to say that we are not going to use any
9 of them, and I think it would just be a case by case
10 basis of what we intended to bring up with them as to
11 how the Court would rule at that time.

12 **BY THE COURT:** Okay, as to the two that were in
13 the Leflore County Jail, those issues were raised
14 earlier at the first trial. I ruled on them that they
15 could testify as to confessions or statements that he
16 made to them in the jail. I ruled that they, that it
17 could come in. There certainly has to be an
18 instruction about jail house statements that we would
19 give to the jury, and that would be done.

20 As to these other questions that relate to what
21 they did with the other attorney and all like that, I
22 have got to wait and see what the context is that you
23 offer that. It may be admissible; it may not. It is
24 just going to depend on how the proof flows for me to
25 be able to-- I have to determine that at that time.
26 So I reserve ruling on that portion of it until, until
27 trial. Mr. Carter, you will have to make an objection
28 at the appropriate time.

29 As to the statements that he made to them in the

Motion Hearing of 12/10/03

1 jail though, I have already held that they are
2 admissible. You are certainly entitled to raise that
3 objection again if they offer it.

4 **BY MR. EVANS:** And the Court may want to rule on
5 his objection on Odell Hallmon also.

6 **BY THE COURT:** At a later date.

7 **BY MR. EVANS:** Yes, sir. Do you want--

8 **BY THE COURT:** Well, any statements that the
9 Defendant made to Odell Hallmon, I think I have
10 already ruled on and I have allowed. The question
11 that I have to reserve my ruling on is whether or not
12 these other things, because they then made
13 contradictory statements after that, as to whether
14 these things about impeaching and all are admissible,
15 I will just have to wait and see what we have got at
16 trial on that.

17 **BY MR. EVANS:** Yes, sir.

18 **BY THE COURT:** But as to any statements they
19 made, with appropriate instructions those statements
20 are and I have held that they are admissible. All
21 right.

22 **BY MR. CARTER:** The next, Your Honor, is a Motion
23 for Additional Peremptory Challenges which has been
24 filed before also. And I think--

25 **BY THE COURT:** -- In this case it may be
26 justifiable. But it is also, I'm going to have to see
27 what voir dire brings before that. I will reserve my
28 ruling on the peremptory challenges until that time,
29 but it is possible. In light of the fact that we are

Motion Hearing of 12/10/03

1 trying it in Montgomery County, that may be
2 appropriate, but I have to just see what the proof
3 shows -- I mean what the voir dire shows.

4 **BY MR. CARTER:** Okay, Your Honor, the next motion
5 is a Motion to Place Additional Questions on the Jury
6 Questionnaire. I found a copy of the -- I don't know
7 that I can find it now -- the jury questionnaire that
8 was used the other time, and there were a lot of
9 questions on there, and in fact, more than I'm
10 probably used to seeing. But I wanted to make sure
11 that there were a few more that related to the death
12 penalty. One moment, Your Honor. (Pause)

13 Well, I'm not really sure that it has more than
14 what we were used to seeing, Your Honor. But I know
15 there was a big discussion before about other
16 questions being added, and I'm not suggesting that we
17 are asking for the same ones that Mr. Lumumba asked
18 for before, but we at least feel that questions such
19 as "What do you think about the death penalty?" should
20 certainly be included and whether or not you have
21 religious, moral or other beliefs that would prevent
22 you from deciding the guilt or innocence of a person
23 accused.

24 **BY THE COURT:** I think we have got -- I think
25 that is in the questionnaire, isn't it?

26 **BY MR. EVANS:** Yes, sir.

27 **BY THE COURT:** We have a death penalty question
28 in there. What we don't have is this stuff that is in
29 this motion.

Motion Hearing of 12/10/03

1 **BY MR. CARTER:** Okay. One moment, Your Honor.

2 In this case, Your Honor, the victims were three
3 whites and one black as we all know, and I see
4 question number 10 here. Mr. Lumumba attempted to
5 have this question presented on the jury questionnaire
6 which reads: "Do you have any racial bias or prejudice
7 against black people?" And if this were to be
8 included, I think it should -- if the Court would
9 include it, I think the Court should restate it and
10 ask, "Do you have any racial bias or prejudice against
11 black or white people?" Perhaps if the Court were to
12 include it, or to think that race should be, even be
13 mentioned on the jury questionnaire.

14 **BY THE COURT:** The questionnaire does not replace
15 voir dire, and I don't think that -- I'm not going to
16 allow that question on the questionnaire. That is
17 certainly something you can ask in voir dire. I
18 note -- I don't know what your position is on these
19 other questions that you have got in your motion.
20 Personally, I think, I think the questions that you
21 have in your, the additional questions you have in
22 your motion fly in the face of your motion for
23 individual voir dire because it's going to give the
24 jury six weeks or so to talk and think about what
25 prior trials they have had.

26 I'm not going to allow this. I'm going to allow
27 the same questionnaire we have allowed before.
28 Probably, it was a little different in between one and
29 two, wasn't there?

Motion Hearing of 12/10/03

1 **BY MR. EVANS:** I think there were a few questions
2 changed. The one that was used in two, I think, is
3 what the Court has said is going to be the standard.

4 **BY THE COURT:** Two?

5 **BY MR. EVANS:** Yes, sir.

6 **BY THE COURT:** We will go with two then. Make
7 sure y'all both understand what we are talking about
8 as to two, but that's the one I'm going to allow.

9 **BY MR. CARTER:** Also, Your Honor, there was a
10 motion filed in the previous case that we present to
11 the Court also which is the Motion to Bar the Use of
12 Certain Aggravating Circumstances. There was an
13 effort made by Mr. Lumumba to, I believe, bar the
14 aggravator that this was done to avoid arrest or to
15 keep witnesses from being available. And according to
16 Mr. Lumumba and I agree that there is really no proof
17 that this is the case.

18 **BY THE COURT:** Okay. That is not an aggravating
19 circumstance.

20 **BY MR. EVANS:** Yes, sir.

21 **BY THE COURT:** What? Maybe I missed something.

22 **BY MR. CARTER:** Let me make sure I can find it in
23 here.

24 **BY MR. EVANS:** To avoid lawful arrest, and in
25 that circumstance one of the ways that that can be
26 proven or the way that that is relevant is that all of
27 the witnesses to the case there were killed there, and
28 it shows that--

29 **BY THE COURT:** Did we allow that?

Motion Hearing of 12/10/03

1 **BY MR. EVANS:** Yes, sir. We have been through
2 all of those issues.

3 **BY THE COURT:** I will adopt the ruling from the
4 past case then.

5 **BY MR. CARTER:** The next motion, Your Honor, is a
6 Motion to Dismiss for Violation of Defendant's Rights
7 Under 99-17-1. Two of these cases have been tried.
8 This crime took place back in 1996, July 16th, I
9 believe. Two of the cases have been tried, and two
10 have not been tried. And we move that the Court would
11 dismiss the two cases that haven't been tried based on
12 the fact that they haven't been tried within 270 days
13 and based on the fact that at this point one of the
14 star witnesses, who is a Mr. Collins - I can't
15 remember his first name- is now deceased, and we won't
16 have an opportunity to cross-examine him in the new
17 trial.

18 **BY MR. EVANS:** We have got two transcripts, Your
19 Honor. He has been thoroughly cross-examined in the
20 two previous trials. The Court, I think, can take
21 judicial notice of why these other two cases have not
22 been tried. We have had scheduling agreements with
23 all the attorneys involved and with the Court, and we
24 have tried the cases as we came to them and as the
25 Court had time for us to try them. There have also
26 been numerous motions filed by both Chokwe Lumumba
27 and I think also by Keith Ball for us not to try any
28 more of the cases until the Supreme Court ruled on
29 them.

Motion Hearing of 12/10/03

1 So we have done everything we can to get the
2 cases to trial, and by agreements and orders of
3 continuances in the file these cases have not been
4 able to be tried at this point. Now Defense Counsel
5 has entered into an agreed motion, which the Court has
6 granted, for all four cases to be consolidated, so now
7 they will all four be tried at the same time.

8 **BY THE COURT:** Mr. Evans is correct. There has
9 been no violation of the speedy trial in this case in
10 relation to the two cases that have not been tried.
11 They both have not been tried by the agreement of the
12 parties or an understanding between all the parties
13 and the Court that they would not be tried until these
14 appeals came down. Also, there may be somewhere in
15 this voluminous file some motions for speedy trial,
16 but nobody has ever raised those before the Court
17 until basically today. I also note that the defense
18 pursued consolidation in this case, part of the reason
19 I am sure being that this is the only way that case,
20 this case could have been tried here was by
21 consolidating it. So that motion is overruled.

22 **BY MR. CARTER:** The next motion, Your Honor, is a
23 Motion to Suppress that I will withdraw because it has
24 been argued before and denied, and I don't have
25 anything additional.

26 **BY THE COURT:** Okay, well, for the record that
27 Motion to Suppress -- I don't know how we designate
28 it. It's about statements he made, search warrants,
29 gunpowder residue and those things. I have ruled on

Motion Hearing of 12/10/03

1 that, and that motion is overruled.

2 **BY MR. CARTER:** The next motion, Your Honor, is a
3 Motion in Limine to exclude Defendant's prior
4 conviction from evidence and testimony at trial. I
5 can't imagine--

6 **BY THE COURT:** I didn't know he had a prior.

7 **BY MR. EVANS:** Your Honor, the only thing he has,
8 and this came out in cross-examination of one of his
9 witnesses at the first trial. He shot someone once
10 before, I think, when he was a juvenile. That came
11 out, and I believe it was his mother testified that he
12 had never been violent in the past.

13 **BY THE COURT:** That was at the sentencing phase.

14 **BY MR. EVANS:** That was in the sentencing phase.
15 This motion came up last time. The State agreed that
16 we will not attempt to go into anything like that
17 until at such time as the issue is brought up and is
18 relevant. And as we normally do, if we determine that
19 it is relevant before, I will offer it; we will tell
20 the Court what we are intending to do and let the
21 Court rule whether we can or cannot depending on the
22 facts of the case.

23 **BY THE COURT:** It probably can't come in, but I
24 have to wait and see how it, what happens at that
25 time. There are some ways under the rules that it
26 could be admissible. The weight of authority is going
27 to be on your side that it is not, but I will reserve
28 my ruling until I see how it is presented.

29 **BY MR. CARTER:** We also, it means that the two

Motion Hearing of 12/10/03

1 prior trials involved in this case is not mentioned.

2 **BY MR. EVANS:** There is not going to be any way
3 for this jury not to know he has been tried before. I
4 think that it would be improper for us to go into it
5 any more than is necessary, and we do not intend to go
6 into the fact that he has gotten two prior death
7 penalties. I think that would be improper, but it is
8 not going to be any way that this jury is not going to
9 know that he has been tried before.

10 **BY THE COURT:** I think that will be self evident
11 once we do the individual voir dire and once we know
12 who is on the jury. I'm going to revisit that at that
13 time because I want that limited, extremely limited,
14 maybe excluded. But I will wait to see what the
15 makeup of the jury is, and if all the jurors know
16 everything about it, then it's not near as prejudicial
17 as if they didn't know anything. But I can't know
18 that until such time as I see who is on the jury and
19 what their answers to my voir dire questions are going
20 to be. So I will reserve my ruling now.

21 **BY MR. CARTER:** The next motion, Your Honor, is a
22 Motion in Limine to Exclude Hearsay Testimony of
23 Prosecution Witnesses.

24 **BY THE COURT:** You will just have to make that
25 objection when the time comes. Hearsay is not
26 admissible except under 803 and so -- but it's all in
27 context. So if you make the proper objection and it
28 does not meet the standards, then I'm going to sustain
29 your objection.

Motion Hearing of 12/10/03

1 Here is the Motion for Speedy Trial. I have
2 already just ruled on that. But let me say this. I
3 have ruled on it in relation to the two that have not
4 been tried, but in relation to this one, we are moving
5 within a year of the time that the Supreme Court sent
6 it back. I forget exactly when the date was they sent
7 the last one back, but we will have it tried within a
8 year of that date, and I find there is no violation
9 there.

10 **BY MR. CARTER:** The next motion, Your Honor, is a
11 Motion to Control Prejudicial Publicity.

12 **BY MR. EVANS:** It's a little late.

13 **BY THE COURT:** You are loading me down with that
14 one.

15 **BY MR. CARTER:** I take it, Your Honor, that the
16 jury is certainly going to be sequestered and they
17 shouldn't be--

18 **BY THE COURT:** -- Well, they have to; it's a
19 matter of law.

20 **BY MR. CARTER:** Yes, sir. But as much as the
21 Court can control prejudicial publicity, we just move
22 the Court to do it.

23 **BY THE COURT:** Okay. The rules of court and I
24 think there is-- in this case -- I don't know whether
25 it's in this particular case. If it's not, I'm going
26 to make it in this particular case. I issued a gag
27 order somewhere, didn't I?

28 **BY MR. EVANS:** On one particular case at one
29 time, you did.

Motion Hearing of 12/10/03

1 **BY THE COURT:** Okay. The rules impose a gag
2 order, and so y'all are gagged. Okay, and all the
3 court personnel are gagged. Y'all can't talk about
4 it. That is the extent of what I can do, Mr. Carter.
5 Certainly, since we have cameras in the courtroom now,
6 it's not as much as I can do as I used to. There will
7 be-- no, they are not here now, but they will be here.
8 And so I am imposing the gag order that is included in
9 the Uniform County and Circuit Court Rules on all of
10 y'all right now as to everybody that that rule applies
11 to. And y'all can furnish me an order to that effect.

12 And then you just have to, whatever else comes
13 up, you will have to just bring it up to me,
14 Mr. Carter. I will do the best I can. Okay?

15 **BY MR. CARTER:** Yes, sir. The next motion is
16 just an assertion of right for Mr. Flowers to be
17 present, and he has already been present, and I think
18 it is understood--

19 **BY THE COURT:** -- That is sustained.

20 **BY MR. CARTER:** Okay. And Motion for a Special
21 Venire, which I think the Court has already--

22 **BY THE COURT:** Yeah, we are going to discuss that
23 after we hear the motions. And there will be a
24 special venire.

25 **BY MR. CARTER:** Your Honor, the next motion is a
26 Motion for Process Instructions. From my reading of
27 the old file, I think the Court did this in one or
28 both of the other cases just to make sure that the
29 jury understood the process, the two phases of the

Motion Hearing of 12/10/03

1 trial, and as much as possible, aggravators and
2 mitigators. And I guess I just want to know if the
3 Court will grant this motion and do the same in this
4 particular case.

5 **BY THE COURT:** Yeah, well, I'm going to, yeah,
6 I'm going to do the best I can to explain the process
7 to them. I think I have to do that in voir dire
8 anyhow.

9 The next one is the jury questionnaire. We have
10 done that, haven't we?

11 **BY MR. CARTER:** Yes, sir. You have already
12 ordered that, I believe.

13 **BY THE COURT:** Motion to Prohibit Jury Dispersal.
14 They will be kept together at all times. They will be
15 sequestered. They will be under the control of the
16 bailiffs. They will not be allowed to wander around
17 the courtroom or the courthouse. They will totally be
18 sequestered during this, from the time that they are
19 impaneled until the time that they are discharged.

20 **BY MR. CARTER:** The next motion, Motion to Invoke
21 the Rule Prior to Voir Dire and Enjoin the District
22 Attorney from Advising Witnesses of Previous
23 Testimony.

24 **BY MR. EVANS:** Your Honor, we have gone through
25 this before. There is nothing in the rules that say
26 that voir dire, that the rules should be invoked prior
27 to voir dire. In this case there are going to be
28 family members who have an absolute right to be
29 present while we are picking the jury and help us make

Motion Hearing of 12/10/03

1 a decision on what jurors we want, whether they will
2 or will not testify. We agree that the rule should be
3 invoked on both parties after voir dire is complete.
4 Nothing that happens in voir dire is going to
5 influence what any of the witnesses for either side
6 say. From the same standpoint, if he has family
7 members that want to be present during voir dire, I
8 think he has a right for that.

9 And as far as anyone talking to witnesses about
10 previous testimony, I have argued this before. That
11 is in the rules. The rules say that neither party can
12 do that. It's not something that says the State can't
13 do it; it's in the rules that no attorney for either
14 party can do that, and I think that is
15 self-explanatory.

16 **BY THE COURT:** Well, I think all the witnesses in
17 the case already know the previous testimony anyhow.
18 I think it is going to be essential for both of you to
19 have certain of your witnesses in the courtroom to
20 pick the voir dire, to pick the jury because of where
21 we are trying the case. And there is no rule that
22 requires that, and I have never required it, and I'm
23 not going to this time. So that motion is denied.

24 **BY MR. CARTER:** Motion to Adjourn at a Reasonable
25 Time, Your Honor. I think--

26 **BY THE COURT:** -- Wait a minute. The next one I
27 have got is Motion for Opportunity to Rehabilitate Any
28 Prospective Juror who Expresses Reticence When Asked
29 to Kill a Fellow Human Being. You are going to have

Motion Hearing of 12/10/03

1 all the time -- pursuant to the law, you are going to
2 have all the time you need to go through that
3 consistent with what you can and cannot ask.

4 BY MR. CARTER: Thanks.

5 BY THE COURT: To quit at a reasonable time. We
6 are going to do that. It is just, the only difference
7 is I get to decide what is reasonable.

8 BY MR. CARTER: Yes, sir.

9 BY THE COURT: Motion to Sequester Jurors Prior
10 to and During the Trial of the Case. That will be
11 done because it is required by law, but not prior to
12 voir dire. It is after they are impaneled.

13 Okay, Motion to Preclude them from bringing him
14 into court in shackles, and that motion -- the only
15 restraints he will have on him will be the brace that
16 we have, that y'all have. You have got one, don't
17 you? We will get one. He will have the leg brace
18 that will be under his clothes. Nobody will see it.

19 As to limiting the number of uniformed officers
20 in the courtroom, this is a case that has been
21 volatile from day one, especially been volatile in
22 Montgomery County, at least in one of the hearings I
23 had. And I reserve the right to have such security as
24 is necessary to maintain order in this courtroom. I'm
25 going to do that. I will not overload the courtroom
26 with uniformed officers, but we are not going to have
27 any disturbances or get anybody hurt during this
28 process. So I will determine that before the trial.

29 Motion to Enjoin Victims' Family from Showing

Motion Hearing of 12/10/03

1 Emotion in the Courtroom While Sitting as Spectators.
2 I will not allow undue disturbances in this courtroom
3 by anybody on either side. There are going to be
4 emotional things involved with this case, as there
5 have been all along, and those things are natural.
6 And as long as they are not disruptive to the Court,
7 I'm not going to get into that. If they are
8 disruptive, then I will have the bailiffs take care of
9 that.

10 Okay, I am down to Motion to Bar Admission of
11 Inflammatory and Prejudicial Matters Concerning the
12 Victim. This is about victim impact at the penalty
13 stage. This--

14 **BY MR. EVANS:** -- It's too early.

15 **BY THE COURT:** It's not a correct statement of
16 the law. The law is that they can put on victim
17 impact. I'm not cutting you off. I mean if you have
18 got anything you want to add to that, but the law is
19 clear you can do that.

20 **BY MR. CARTER:** Well, I don't have anything to
21 add, Your Honor, except we, except that, you know, we
22 filed a motion.

23 **BY THE COURT:** Okay, I overrule the motion.

24 **BY MR. CARTER:** Okay. Mine may be out of order.

25 **BY THE COURT:** Mr. Evans, do you know of any
26 reason you ought to be disqualified now?

27 **BY MR. EVANS:** Not that I'm aware of, Your Honor.

28 **BY THE COURT:** The next Motion is for Discovery
29 of any Possible Basis for Disqualification of the

Motion Hearing of 12/10/03

1 Prosecuting Attorney. Based on that statement, the
2 motion is overruled.

3 Motion for Disclosure of Any Possible Basis of
4 Judicial Recusal. Based on my statement, I'm not
5 going to recuse myself. I don't know of any reason I
6 should.

7 **BY MR. CARTER:** I think you answered that before,
8 Your Honor, and you said you didn't really have any
9 basis.

10 The next one, I think, is for a 24 hour cooling
11 off period between the two phases. Is that possible?

12 **BY THE COURT:** No. I will reserve my ruling on
13 that. We will see where we are at the time. If the
14 jury returns a verdict on the penalty phase at 10
15 o'clock in the morning, we will probably start again
16 after lunch, so I will reserve my ruling on that.

17 **BY MR. CARTER:** Yes, sir.

18 **BY THE COURT:** How about the motion -- go ahead.
19 Which one is next?

20 **BY MR. CARTER:** I think the next one will be a
21 Motion to Preclude the State from Introducing Victim
22 Impact evidence, but I think you have already ruled on
23 that.

24 **BY THE COURT:** Right. That is overruled.

25 **BY MR. CARTER:** And number 3 that I have is
26 Motion to Sequester Jurors Prior to and During Voir
27 Dire.

28 **BY THE COURT:** I have ruled on that.

29 **BY MR. CARTER:** Earlier. Your Honor, next is a

Motion Hearing of 12/10/03

1 Motion for Rap Sheets and NCIC Reports on their
2 witnesses. We have no way of actually getting this
3 information except going through the State. And we
4 just ask that if their witnesses that are critical and
5 relevant to the issue of guilt, that we be allowed the
6 opportunity to cross-examine them based on their
7 criminal record, if they have one. And we have no way
8 of, although we have tried to get this information,
9 except that the government give it to us.

10 **BY MR. EVANS:** Your Honor, from the very
11 beginning and before the very first trial, we have
12 followed the rules, and any conviction that any
13 witness has that we are aware of in any form or
14 fashion, we have furnished. They already have that.
15 That has been available for years.

16 **BY THE COURT:** Okay.

17 **BY MR. EVANS:** As far as furnishing an NCIC
18 report, to start with, we cannot do that. And we
19 don't have NCIC reports on them either. All we have
20 is what they are convicted of.

21 **BY THE COURT:** And that is all you are required
22 to furnish.

23 **BY MR. EVANS:** Yes, sir.

24 **BY THE COURT:** I overrule the motion on the basis
25 that the information sought has been furnished,
26 although not in necessarily the form that you
27 requested, but consistent with the law it has been
28 furnished to both sides-- I mean to you.

29 **BY MR. CARTER:** Your Honor, the next motion is a

Motion Hearing of 12/10/03

1 Motion to Discover Information Regarding Potential
2 Jurors. Often somebody from the police department or
3 sheriff's department or connected to the government
4 gets a chance to serve a summons and subpoenas and so
5 on, and throughout the process of investigating this
6 case and preparing for trial, the government often
7 finds out things about prospective jurors that we
8 don't know about. That that gives them an advantage,
9 we think, and we move the Court that if the
10 prosecution somehow finds out information about
11 prospective jurors that is helpful to us, that they
12 will be fair and nice and provide that information to
13 us.

14 **BY MR. EVANS:** Just as I am sure if they know
15 something about a juror, they would furnish it to us,
16 Your Honor.

17 **BY MR. CARTER:** Well, we would. We don't know
18 about y'all.

19 **BY MR. EVANS:** It is not our responsibility to
20 investigate the jurors for them no more than it is
21 ours on the other hand. And this is something that I
22 think is improper.

23 **BY THE COURT:** The motion is overruled.

24 **BY MR. CARTER:** The next motion, Your Honor, is a
25 Demand for Notice of Any Bad Acts that the State may
26 wish to use at the first phase of this trial.

27 **BY THE COURT:** Okay.

28 **BY MR. CARTER:** We feel that we have a right to
29 this because if we are to defend Mr. Flowers and to

Motion Hearing of 12/10/03

1 meet the charges against him, that we at least need to
2 know what they are going to present against him and
3 not be ambushed.

4 **BY THE COURT:** Okay. Of course, you have got the
5 transcripts of the first two trials, and you have got
6 discovery, so you have got that information. If there
7 is anything that has not been furnished in that
8 regard, Mr. Evans--

9 **BY MR. EVANS:** It's all in the first two trials.

10 **BY THE COURT:** Okay. So you already have that
11 information. If there is any, if he should -- if out
12 of the blue there should be some new raised, then you
13 make the 404 objection, and I will -- of course, don't
14 y'all catch me by surprise. I want to know that
15 before --

16 **BY MR. EVANS:** --yes, sir--

17 **BY THE COURT:** --so I can get the jury out of
18 here.

19 **BY MR. EVANS:** And Your Honor, on some of these,
20 I think on that even though it has been done in the
21 past, I think we have still got to go through a new
22 ruling on it in this trial anyhow.

23 **BY THE COURT:** Oh, absolutely.

24 **BY MR. CARTER:** Your Honor, this next motion
25 might have already been addressed to some extent, but
26 it's a Motion to Assure that Mitigating Circumstances
27 Receive Their Due Weight and Attention from the Jury.
28 Of course, it is always our fear that the jury won't
29 understand exactly what mitigating circumstances are,

Motion Hearing of 12/10/03

1 or for whatever reason, won't think that mitigating
2 circumstances should be considered. And we are just
3 moving that the Court will do whatever the Court can
4 to assure that they are given their due weight.

5 **BY THE COURT:** Well, the Court is going to give
6 the instruction, and that's all the Court can do. It
7 will be up to y'all to argue the weight of it to the
8 jury, and it will be improper for me to do anything
9 other than give that instruction.

10 The Motion for Jury Questionnaire; we have done
11 that.

12 **BY MR. CARTER:** So I take it the one about making
13 sure that mitigation circumstances receive their due
14 weight is granted?

15 **BY THE COURT:** Well--

16 **BY MR. EVANS:** -- the motion--

17 **BY THE COURT:** -- No, it's not. It's overruled.
18 But it's overruled on this basis. I am going to give
19 an instruction on mitigating circumstances that --
20 probably the same one. You may have more mitigating
21 circumstances, but at least to the extent that it was
22 given in the first two trials, I'm sure I'm going to
23 give that instruction with any additional mitigating
24 instructions that are allowed by law and you present
25 to me. That, in fact, is all that I can do. So I
26 can't grant your motion, but I can give that
27 instruction, and I am certainly going to do that. It
28 would be reversible error for me not to.

29 **BY MR. CARTER:** Thank you.

Motion Hearing of 12/10/03

1 **BY THE COURT:** The next one is Motion to Disclose
2 Past and Present Relationships, Association, Ties
3 Between the District Attorney, his Staff, the Law
4 Enforcement Agencies and Prospective Jurors.

5 **BY MR. EVANS:** Voir dire covers that.

6 **BY THE COURT:** It does. We are going to do that
7 in voir dire. That motion is overruled.

8 **BY MR. CARTER:** Your Honor, this next motion, the
9 next two motions are essentially providing the Court
10 an opportunity to declare the Mississippi death
11 penalty statute unconstitutional to the extent that we
12 don't consider it to be fair and in a lot of ways,
13 especially as far as setting forth specific
14 differences between when the death penalty should be
15 sought and when it shouldn't be sought.

16 **BY THE COURT:** That would be an issue for another
17 court. I think it is improper for a trial court to be
18 making that ruling especially on an abstract basis
19 like this. So I overrule those motions. If it ever
20 gets there again, you can raise that with the Supreme
21 Court. That is as to motions marked 10 and 11.

22 **BY MR. CARTER:** And motion 12 is a Motion for
23 Order to Produce Exculpatory Information. This is
24 essentially a duplicate of the motion for discovery
25 and another motion or so that was filed by Mr. Lumumba
26 and perhaps Mr. Gilmore. And essentially all we are
27 trying to do here, Your Honor, is just make sure that
28 we have everything that is related and critical and
29 relevant to proving the facts of this case.

Motion Hearing of 12/10/03

1 **BY THE COURT:** Well, the rules require that he
2 provide you with any exculpatory evidence. And
3 Mr. Evans, I assume you have done that--

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** -- to the extent the rules
6 require.

7 **BY MR. EVANS:** But there is a lot in this motion
8 that is not, I think, proper.

9 **BY THE COURT:** I'm going to require what the
10 rules require.

11 **BY MR. EVANS:** Yes, sir.

12 **BY THE COURT:** That is the Uniform Circuit Court,
13 Circuit and County Court Rules.

14 **BY MR. CARTER:** The next one, Your Honor, is I
15 think a Motion to Bar Trials on Untried Cases and to
16 Proceed Only on the cases of Derrick Stewart and
17 Bertha Tardy.

18 **BY THE COURT:** I don't have that one. The next
19 one I have was Motion to Preclude Unreliable and
20 Untrustworthy Snitch Testimony. I have already ruled
21 that if it's presented correctly, they can testify,
22 but only with an instruction to the jury as to the
23 reliability of that testimony. That motion then is
24 overruled.

25 The only other one I have got left is a Motion to
26 Preclude Prosecution from Seeking to Rely on 99-19-101
27 (7(b), (c) and (d).

28 **BY MR. EVANS:** That is the death penalty statute.

29 **BY THE COURT:** Okay, that motion is overruled.

Motion Hearing of 12/10/03

1 Now what else have you got? That is all I have.

2 BY MR. CARTER: That is it, Your Honor.

3 BY MR. EVANS: There are two more that I have
4 that he furnished me. One was a Motion to Sequester
5 Jurors Prior to and During the Trial of the case.

6 BY THE COURT: No, I have ruled on that.

7 BY MR. EVANS: Well, this is a different one.

8 This one actually has--

9 BY THE COURT: -- He hasn't furnished it though.

10 BY MR. EVANS: Okay.

11 BY THE COURT: A motion filed is not a motion
12 presented to the Court.

13 BY MR. CARTER: One moment, Your Honor.

14 (Pause while Mr. Carter looks at the motion.)

15 BY MR. CARTER: Actually, Your Honor, the motion
16 to sequester jurors prior to and during the trial of
17 the case was ruled on some kind of way. Mr. Evans
18 apparently --

19 BY THE COURT: --Well, let me just rule again so
20 everybody will understand it. Once the jury is
21 impaneled, they will be sequestered, not before but
22 after. They will be sequestered until such time as I
23 discharge them at the end of the case, whatever that
24 time may be.

25 Anything else?

26 BY MR. CARTER: That is it from us, Your Honor.

27 BY THE COURT: Okay. The Court has entered an
28 order summonsing 500 jurors for this case. We are
29 going to issue, the first call will be for 300 jurors

Motion Hearing of 12/10/03

1 who will report on Monday. The second call will be
2 for 200 additional jurors who will report on Wednesday
3 depending on where we are on Tuesday. We will have a
4 message for them if they can't -- if we have got a
5 jury by then, I will release them all. But we are
6 going to do it 300 on the front end and 200 on the
7 back end. We are going to pull this jurors the Monday
8 after Christmas, which is the 29th. Right? Monday
9 the 29th, and that is at 10 o'clock.

10 Now you have asked for a special venire. It is
11 going to be, it will be a special venire. However, if
12 you are going, if you want to persist with it in that
13 nomenclature, then I have got different folks that
14 have to be here. You are going to get a new jury one
15 way or another. Most of the time we don't go through
16 that old procedure where the chancery clerk and
17 everybody else has to be here. Do you have any
18 objection to us just having the Circuit Clerk pull
19 this venire? Everybody will be present, you and the
20 Defendant.

21 BY MR. CARTER: No, sir.

22 BY THE COURT: Okay, all right. We will issue,
23 the summonses will go out that week. They will, a
24 questionnaire will go out with them. And then you
25 will be able to get those questionnaires as they come
26 in and make arrangements with Ms. Halfacre about that.
27 Anything else?

28 BY MR. EVANS: Your Honor, one second.

29 (Mr. Evans confers with Mr. Hill.)

Motion Hearing of 12/10/03

1 **BY MR. EVANS:** Your Honor, the only thing that
2 I'm aware of, the only thing, I think, we have been
3 furnished by opposing counsel as far as reciprocal
4 discovery are things that were used in previous
5 trials. I would just ask at this point if there is
6 anything other than the ones at previous trials, that
7 we need to be furnished.

8 **BY THE COURT:** Both sides are required to
9 supplement discovery, and you must do it in a timely
10 fashion. I really don't want to have to get into Box
11 hearings the first day of trial.

12 **BY MR. EVANS:** Yes, sir.

13 **BY MR. CARTER:** We will do that.

14 **BY THE COURT:** Okay, anything else?

15 **BY MR. EVANS:** No, sir.

16 **BY THE COURT:** Okay. All right, court is
17 adjourned. I need to see the lawyers up here at the
18 bench.

19 HEARING OF DECEMBER 10, 2003 CONCLUDED.
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Draw Venire on 12/29/03

(ON DECEMBER 29, 2003, THE COURT CONVENED IN THE CIRCUIT CLERK'S OFFICE IN WINONA, MISSISSIPPI, FOR THE PURPOSE OF DRAWING THE JURY VENIRE. PRESENT REPRESENTING THE STATE WERE HON. DOUG EVANS AND HON. CLYDE HILL. PRESENT REPRESENTING THE DEFENDANT WERE HON. RAY CHARLES CARTER AND HON. STACY FERARRO. THE DEFENDANT CURTIS FLOWERS AND THE CIRCUIT CLERK OF MONTGOMERY COUNTY, MS. JULIE HALFACRE, WERE ALSO PRESENT.)

BY THE COURT: Let the record reflect that we are here on December 29, 2003, in the Montgomery County courthouse for the purpose of drawing the venire for the trial of Curtis Flowers set for February 2, 2004, in Montgomery County. We are going to draw 500 names from the box. They will be drawn by computer in Montgomery County. The list, of course, is made as in other counties from the registered voters of this county. The computer is going to, will randomly select those. We are going to furnish everybody -- we will give you two lists. I think, can your computer do alphabetical and random too?

BY THE CLERK: Uh-hum.

BY THE COURT: Okay. We are going to give-- they will have a random selection list, which will be the order in which the jurors will be -- when we start voir dire, that will be the order they will be in. For the attorneys' convenience, we are going to do an alphabetical listing too, so you will each have two copies.

There is present the Defendant, Curtis Flowers,

Draw Venire on 12/29/03

1 and his counsel. The District Attorney is here.

2 Ms. Halfacre, the Circuit Clerk, is here.

3 Anybody got anything else they want to put in the
4 record for this?

5 **BY MR. CARTER:** We don't have anything.

6 **BY THE COURT:** Is there any objection to the way
7 we are pulling this jury?

8 **BY MR. EVANS:** No, sir.

9 **BY MR. CARTER:** Is it random?

10 **BY THE COURT:** The computer is going to randomly
11 select. Ms. Halfacre, you might tell a little bit how
12 the computer does that, I mean how it gets in there.

13 **BY THE CLERK:** Okay. At the beginning of the
14 year, the jury commissioners come in, and the dice is
15 rolled. A coin is flipped to select the juror box for
16 a year. This box was selected last April, and at this
17 time when we enter into the computer the number of
18 names that we want for this voir dire, then it will
19 randomly pull these 500 names from that jury pool.

20 **BY THE COURT:** Okay.

21 **BY THE CLERK:** Do we want, did I understand you
22 to say we would need 300 jurors to report on Monday
23 and the additional 200 on Wednesday?

24 **BY THE COURT:** Yeah, we are going to pull, you
25 can go ahead and pull 500 now. When we get the list,
26 then you can cut it at the first 300. We will pull
27 the first 300 to be here initially, and then we will
28 have the others report later in the week; the other
29 200 report later in the week depending on what happens

Draw Venire on 12/29/03

1 with the first 300.

2 BY THE CLERK: Okay. So I need to pull all 500?

3 BY THE COURT: You can pull the 500 now.

4 BY THE CLERK: Now the 500 will state, the
5 summons will state that they will be here on Monday.
6 Then do we need to put a note in there saying for the
7 last 200 to report on Wednesday?

8 BY THE COURT: Yes.

9 BY THE CLERK: Okay, all right. I just wanted to
10 make sure. Okay.

11 BY MR. CARTER: I have one other question. It's
12 probably a stupid question, but is there any, I guess
13 subjectivity involved in this process?

14 BY THE CLERK: No. It's just, you know, this is
15 just a random list of the registered voters in
16 Montgomery County. The 2000 pool is just, it's pulled
17 at random from the registered voters in the county.

18 BY THE COURT: And I am correct; now the random
19 numbers are selected by a throw of the dice.

20 BY THE CLERK: By the roll of the dice and then
21 the flip of a coin.

22 BY THE COURT: Okay.

23 BY THE CLERK: And this pool of 2000 was selected
24 at the end of April this year to serve until the end
25 of April, 2004.

26 BY MR. CARTER: Okay.

27 BY THE COURT: Any objection?

28 BY MR. CARTER: No.

29 BY MR. EVANS: None, Your Honor.

Draw Venire on 12/29/03

1 **BY THE COURT:** All right, Ms. Halfacre, you can
2 pull it.

3 (FOLLOWING A LONG PAUSE AND THE CLERK TYPING IN THE
4 INFORMATION NEEDED ON THE COMPUTER, TWO JURY LISTS WERE
5 PRINTED. A RECESS WAS TAKEN WHILE THIS WAS DONE. FOLLOWING
6 THE RECESS, THERE WAS THE FOLLOWING:)

7 **BY THE CLERK:** I need to ask y'all; they were
8 supposed to bring me another roll of paper, and they
9 have not gotten here with it. They were supposed to
10 bring it before the holiday. This will be only one
11 copy where that is duplicate. Will it matter?

12 **BY MR. EVANS:** Uh-uh.

13 **BY THE CLERK:** If you do not have a copy on this?

14 **BY MR. EVANS:** No.

15 **BY THE CLERK:** One copy will be sufficient?

16 **BY MR. EVANS:** No, we can print some more out if
17 we need them.

18 **BY THE CLERK:** All right. I called them this
19 morning. I thought they would have it here.

20 (FURTHER PAUSE WHILE MORE LISTS WERE PRINTED.)

21 **BY THE CLERK:** That's the two copies. This has a
22 carbon, and this does not. Doug said y'all could make
23 all the copies you need.

24 **BY THE COURT:** Okay. We are working on getting
25 the questionnaire for you and make sure we are all on
26 the same page on that. Then you can send -- now you
27 send out a copy of the questionnaire with the summons.

28 **BY THE CLERK:** Okay.

29 **BY MS. FERRARO:** Is that going out this week, the

Draw Venire on 12/29/03

1 summons?

2 BY MR. EVANS: Uh-hum.

3 BY THE COURT: Y'all are going to have to just,
4 y'all are going to have to periodically check with her
5 as to when they are coming in, and then she will make
6 you some copies of the questionnaires, but it is going
7 to be up to y'all to get them now.

8 BY MS. FERRARO: Okay. Just come by or call?

9 BY THE CLERK: (Witness nods her head.)

10 So you want these in the mail this week?

11 BY THE COURT: They need to go on out, yeah.

12 BY THE CLERK: Okay.

13 BY THE COURT: You know, if you don't -- we have
14 got a short week. If you don't get it all done this
15 week, that's fine, but let's get started on it and
16 start getting them out.

17 BY THE CLERK: Okay.

18 (Off the record briefly while trying to find a copy
19 of the previous jury questionnaire used.)

20 BY THE COURT: I'm going to leave it up to y'all.

21 BY MR. CARTER: Okay, what is the--

22 BY THE COURT: We don't have a copy of the old
23 questionnaire in this file for some reason or another.

24 BY MR. CARTER: Okay.

25 BY THE COURT: He has got one in his file in
26 Grenada. I don't; my computer died, so mine is not on
27 my computer any more.

28 BY MR. CARTER: So he is going to get one here to
29 send with the summons? Is that what we are talking

Draw Venire on 12/29/03

1 about?

2 **BY THE COURT:** Right. It has got to go with the
3 summons, and she is going to start on the summonses
4 today.

5 **BY MR. CARTER:** Okay.

6 **BY MS. FERRARO:** You just want to fax us? Are we
7 going to be home or back at the office?

8 **BY MR. CARTER:** I guess we will be headed on
9 home. Just fax us one, Doug.

10 **BY MR. EVANS:** All right.

11 **BY THE COURT:** Okay. And if anybody has got any
12 objection to it after y'all do it, y'all let me know
13 so we can dispose of that right away. I think we have
14 already decided though; I'm going to do the one that
15 we did on the first trial.

16 **BY MR. EVANS:** Yeah.

17 **BY THE COURT:** And you have certainly got a right
18 to file any objection you want on that, but that is
19 probably the one I'm going to use. I am like
20 99 percent sure that's what I'm going to use. Okay.
21 In that case then, we are through with this.

22 **BY MR. EVANS:** We will head on up there.

23 HEARING OF DECEMBER 29, 2003 CONCLUDED

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February 2, 2004

1 (ON FEBRUARY 2, 2004, AT 8:00 AM BEFORE THE COURT
2 ENTERED THE COURTROOM, THE CIRCUIT CLERK CALLED THE ROLL OF
3 THE 193 JURORS LEFT OUT OF THE FIRST 300 JURORS IN THE FIRST
4 VENIRE. ABSENCES ARE NOTED ON THE FIRST VENIRE, FIRST LIST.
5 AT THE COMPLETION OF THE ROLL CALL, THERE WAS THE FOLLOWING:)

6 BY A JUROR: Ma'am, you didn't call my name.

7 BY THE CLERK: Okay, I was going to ask that.
8 Anybody here whose name I did not call? All right.
9 Let me get my other list. Would you stand up if I
10 didn't call your name.

11 (Ms. Halfacre, the Circuit Clerk, confers with a
12 prospective juror out of the hearing of the Court Reporter.)

13 BY THE CLERK: You are not supposed to be here
14 until Wednesday. There was a note in your letter that
15 said call the office. Okay, so if you had a note in
16 your letter that said to call this office Tuesday
17 night and it will tell you what to do on Wednesday
18 because you are number 367. And anything over 300 was
19 supposed to come Wednesday. Thank you for coming
20 today though. You are also supposed to call Tuesday
21 night.

22 BY A JUROR: (Inaudible)

23 BY THE CLERK: I'm sorry somebody told you that.
24 There was a note in your letter that said call Tuesday
25 night.

26 BY A JUROR: I saw it; I came and asked the lady.

27 BY THE CLERK: Okay. All right. Do you have
28 anything showing you are going to have surgery
29 Thursday?

Roll call of prospective jurors

1 **BY A JUROR:** Just the telephone; he called me.

2 **BY THE CLERK:** Do you think your doctor could fax
3 us something?

4 **BY A JUROR:** Probably could.

5 **BY THE CLERK:** All right, if you could get him to
6 fax us something saying you are going to have surgery
7 Thursday, then you don't have to come. If you go
8 across to the office, they can give you our fax
9 number. Okay.

10 (Another prospective juror approaches Ms. Halfacre
11 and gives her her name.)

12 **BY THE CLERK:** You also are supposed to call
13 Tuesday night to see whether you are to come on
14 Wednesday. So you can go today, but call that number
15 that was on the note Tuesday night, and the answering
16 machine will tell you what to do Wednesday morning.
17 Thank you.

18 Mary Lee. This is a witness.

19 (The bailiff escorts a witness out of the
20 courtroom. The Circuit Clerk approached approximately six
21 more prospective jurors who raised their hands and who were
22 not supposed to report until Wednesday morning. All were
23 told to call back Tuesday night for directions as to
24 reporting on Wednesday.)

25 **BY THE BAILIFF:** Do we have anybody in here that
26 is not a juror?

27 (Several hands go up.)

28 **BY THE BAILIFF:** Okay, let me ask you something.
29 Do we have anybody in here that is a witness? Okay, I

Roll call of prospective jurors

1 need you to --

2 **BY MR. EVANS:** Take them where they are supposed
3 to be.

4 **BY THE BAILIFF:** Yeah, take them where they are
5 supposed to be. If you are a witness, I need you to
6 get out of the courtroom, please. Do we have any more
7 in here that is a witness? (Pause) Now let me see
8 the hands of any jurors we have who is still without a
9 seat. One, two, three, four, five, six. Okay, do we
10 have anybody that does not have anybody sitting by
11 them? All right, raise your hand if you have got a
12 spot, and y'all please come get you a spot and be
13 seated. (Pause) Do we have any other jurors who are
14 standing? Come on down. (Pause) Do we have all
15 jurors seated now? Do all jurors have a seat? Y'all
16 people still standing in the back, y'all are not
17 witnesses? You are just here; right? Okay, if there
18 is any spot available that somebody could sit down, if
19 you will raise your hand so I can get these people
20 seated. If not -- we need everybody in here seated.
21 If not, we need you just to leave the courtroom,
22 please, for right now, and we will take care of this
23 jury.

24 (Off the record briefly until there was the
25 following:)

26 **BY THE CLERK:** Ms. Eskridge, Ms. Mary Eskridge.
27 We had a medical doctor's excuse for you.

28 **BY A JUROR:** I sent one with my form.

29 **BY THE CLERK:** Yes, ma'am. So you don't have to

Oath to answer questions

1 be here today. Okay, is there anybody else who has a
2 doctor's excuse that you brought with you today?

3 Is there anybody here who is over 65 years of age
4 and would like to claim their age? (Several hands go
5 up.) Okay, if you will come down front, please.

6 (Nine people approached the Clerk but the court
7 reporter was unable to hear their names.)

8 **BY THE CLERK:** Okay, is there anyone here who is
9 under the age of 21? Anybody under the age of 21? I
10 see some of you nodding your head but (Laughter.)
11 If you would all please stand. I'm going to give you
12 the first oath of the Court. This is just an oath to
13 answer the questions of the Court. So if you all will
14 please raise your right hand.

15 Do you and each of you solemnly swear or affirm
16 that you will answer the questions of the Court
17 touching on your qualifications as a juror to the best
18 of your ability, skill and understanding so help you
19 God?

20 **BY THE PROSPECTIVE JURORS:** I do.

21 **BY THE CLERK:** Thank you. Mary Lee.

22 (The Clerk and the Bailiff, Ms. Mary Lee Browning,
23 confer briefly.)

24 **BY THE BAILIFF:** Do we have any jurors who did
25 not fill out a juror questionnaire? It came with you
26 when you got your jury summons. If you did not fill
27 one out, we must have it filled out. If you have got
28 it with you today already filled out, let me get it,
29 please. Raise your hands and I'm going to bring you

Jury Qualification

1 one. (Pause) Do we have anybody else that was
2 summonsed to be here but not as a juror? You were.
3 You are in the wrong court.

4 Okay, do we have anybody else in here that was
5 told to be at the courthouse today that is not a
6 juror? If you were, if you were told to be here today
7 and you are not a juror, you are in the wrong place.

8 (AFTER A FEW MINUTES, COURT WAS THEN DULY OPENED BY
9 THE SHERIFF, AND WITH THE COURT, ALL COUNSEL, AND THE
10 DEFENDANT PRESENT, THERE WAS THE FOLLOWING:)

11 **BY THE COURT:** I have got about three jurors out
12 of the room right now. As soon as they get here, we
13 will get started.

14 (Several jurors enter the courtroom.)

15 **BY THE COURT:** Is that everybody?

16 **BY THE BAILIFF:** That's all the women. I don't
17 know if it's any men in the men's restroom or not. I
18 can knock on the door.

19 **BY THE COURT:** Well, we will go ahead and start--

20 **BY THE BAILIFF:** --You did? Okay, that is all of
21 them.

22 **BY THE COURT:** Ladies and gentlemen, as you
23 probably have surmised by now, you have been called
24 here to try one particular case. This case is the
25 State of Mississippi versus Curtis Giovanni Flowers.
26 I anticipate that this case could take as much as two
27 weeks. It is hard for me to tell, but I do have some
28 experience in these type of cases, and from that
29 experience, it would tell me we could go anywhere from

Jury Qualification

1 a week to two weeks. The jurors that are picked to
2 serve on this case will be sequestered for that period
3 of time until we conclude this matter. The first
4 thing I have to do is determine who is qualified to
5 serve on a jury in this matter. There are certain
6 legal qualifications that you must meet in order to
7 serve on a jury in this state.

8 I'm going to go over those with you, and if they
9 apply to you, you should let me know. Now I don't
10 want to hear about the reasons why you can't serve.
11 All I'm interested in, other than these
12 qualifications, I'm really just interested right now
13 in these specific questions. And if these specific
14 questions apply to you, you should let me know.

15 In order to serve on a jury in this matter, you
16 must be a registered voter in Montgomery County. You
17 must be able to read and write. You must not have
18 been convicted of a felony. You must not have been
19 convicted of the unlawful sale of intoxicating liquors
20 within the last five years. You cannot be a common
21 gambler nor habitual drunkard. You must not have a
22 matter pending in this court, which would be something
23 in relation to this case, and you cannot have served
24 on a jury in this county within the last two years.
25 You also must be at least 21 years of age.

26 Do any of these things apply to any of you?

27 **BY A JUROR:** Yes, sir.

28 **BY THE CLERK:** Okay, if you would stand up when
29 you respond because she has to take all this down.

Jury Qualification

1 Yes, ma'am. What is your name?

2 BY A JUROR: (BY JUROR 47) Shannon Collins.

3 This last week I recently moved to Leflore County, and
4 I'm now registered to vote there.

5 BY THE COURT: Okay, and your name is what,
6 ma'am?

7 BY A JUROR: Shannon Collins.

8 BY THE COURT: Shannon Collins?

9 BY A JUROR: Yes.

10 BY THE COURT: Ms. Collins, you are excused.
11 Okay. Yes, sir.

12 BY A JUROR: (By Juror 188) Tommy Daniels.
13 Felony.

14 BY THE COURT: All right, sir. You are excused,
15 sir.

16 BY THE CLERK: What was his name?

17 BY A JUROR: Tommy Daniels.

18 BY THE COURT: Tommy Daniels. Okay, yes, ma'am.

19 BY A JUROR: I have a son, and I'm the only one
20 that can take care of him.

21 BY THE CLERK: I'm going to do that later. I'm
22 just talking about qualifications now.

23 BY A JUROR: Yes, sir.

24 BY THE COURT: Yes, ma'am.

25 BY A JUROR: (By Juror 185) Yes, sir. I could
26 not read and write that good, sir.

27 BY THE COURT: You received some documents to
28 fill out. Did you fill those out?

29 BY A JUROR: I think my daughter did.

Jury Qualification

1 BY THE COURT: I can't hear you, sir.

2 BY A JUROR: I believe my daughter did.

3 BY THE COURT: Your daughter did?

4 BY A JUROR: Yes, sir.

5 BY THE COURT: What is your name, sir?

6 BY A JUROR: MacArthur Buford.

7 BY THE COURT: Sir?

8 BY A JUROR: MacArthur Buford.

9 BY THE COURT: Mr. Buford, you are excused. Yes,
10 sir.

11 BY A JUROR: (By Juror 180) I served on the
12 grand jury two years ago.

13 BY THE COURT: All right, what is your name,
14 sir?

15 BY A JUROR: Jerry Christopher Blakely --

16 BY THE COURT: All right, Mr. Blakely, you are
17 excused. Yes, sir. You. Yes, sir.

18 BY A JUROR: (By Juror 81) I served on the grand
19 jury this past year.

20 BY THE COURT: Your name, sir?

21 BY A JUROR: John Sidney Rogers, Jr.

22 BY THE CLERK: Mr. Rogers, you are excused. Yes,
23 sir.

24 BY A JUROR: (By Juror 133) I was on the grand
25 jury through October of last year.

26 BY THE COURT: And your name, sir?

27 BY A JUROR: Mark Carwile.

28 BY THE COURT: All right, you are excused. Yes,
29 ma'am.

Jury Qualification

1 **BY A JUROR:** (Juror unidentified) I can't hardly
2 read or write.

3 **BY THE COURT:** I will ask you the same question I
4 asked this gentleman over here. You got some forms.
5 Did you fill them out?

6 **BY A JUROR:** Yes, sir. My son read them to me
7 and helped me fill them out.

8 **BY THE COURT:** All right, that would be
9 sufficient, ma'am.

10 **BY A JUROR:** (By Juror 14) I can't read nor
11 write.

12 **BY THE COURT:** Wait a minute. The last lady,
13 please, ma'am. I don't want to go too far into this,
14 ma'am, but could you not read the forms yourself?

15 **BY A JUROR:** Parts of them, but I can't read it
16 all because I can't read too much. I can read some,
17 but not much.

18 **BY THE COURT:** Okay, that would be sufficient,
19 ma'am. Thank you. Yes, ma'am.

20 **BY A JUROR:** (By Juror 14) I can't read nor
21 write.

22 **BY THE COURT:** All right, what about those forms?
23 Did you fill them out?

24 **BY A JUROR:** No.

25 **BY THE COURT:** Did somebody fill them out for
26 you?

27 **BY A JUROR:** Yes.

28 **BY THE COURT:** Okay. What is your name, ma'am?

29 **BY A JUROR:** Mary Hune. I got one but I can't

Jury Qualification

1 read it all.

2 BY THE COURT: What is your name?

3 BY A JUROR: Mary Ann Hune.

4 BY THE COURT: Mary Ann Hughes?

5 BY A JUROR: Hune, right.

6 BY THE COURT: All right, ma'am. You are
7 excused. Yes, sir.

8 BY A JUROR: (By Juror 6) I have a felony, sir.

9 BY THE COURT: All right, what is your name?

10 BY A JUROR: William Lockhart.

11 BY THE COURT: All right, Mr. Lockhart, you are
12 excused.

13 BY A JUROR: (By Juror 101) I have got a felony
14 too.

15 BY THE COURT: I can't hear you.

16 BY A JUROR: I said I have got a felony.

17 BY THE COURT: And what is your name?

18 BY A JUROR: Joel Baskin.

19 BY THE COURT: Okay. Yes, sir; you are excused.

20 BY A JUROR: (By Juror 129) Richard Alan
21 Barrentine. Served on the grand jury two years ago.

22 BY THE COURT: All right, sir. You are excused.

23 BY A JUROR: (By Juror 49) I have a felony.

24 BY THE COURT: All right, what is your name?

25 BY A JUROR: Derrick Weathersby.

26 BY THE COURT: Weathersby?

27 BY A JUROR: Derrick.

28 BY THE COURT: You are excused, Mr. Weathersby.
29 Yes, sir.

Jury Qualification

1 **BY A JUROR:** I'm related.

2 **BY THE COURT:** Okay, we will get to that in a
3 little bit. Yes, ma'am.

4 **BY A JUROR:** (By Juror 3) I just registered to
5 vote in Madison County.

6 **BY THE COURT:** Your name?

7 **BY A JUROR:** Lasonya Forrest.

8 **BY THE COURT:** Okay, you are excused, ma'am.

9 **BY A JUROR:** (By Juror 53) I have a felony.

10 **BY THE COURT:** I'm sorry?

11 **BY A JUROR:** A felony.

12 **BY THE COURT:** And what is your name?

13 **BY A JUROR:** Doris Kirkwood.

14 **BY THE COURT:** Doris Kirkwood?

15 **BY A JUROR:** Yes.

16 **BY THE COURT:** All right, Ms. Kirkwood, you are
17 excused.

18 **BY A JUROR:** (By unidentified juror) I had
19 somebody help me fill mine out.

20 **BY THE COURT:** Could you read it?

21 **BY A JUROR:** Not -- some of it, yes. Some of it,
22 no.

23 **BY THE COURT:** Okay, can you sign your name?

24 **BY A JUROR:** Yes.

25 **BY THE COURT:** All right. That will be
26 sufficient. Yes, sir.

27 **BY A JUROR:** (By Juror 178) Carranzo Robinson. I
28 have a felony.

29 **BY THE COURT:** I didn't get your name; I'm sorry?

Jury Qualification

1 **BY A JUROR:** Carranzo Robinson.

2 **BY THE COURT:** All right, Mr. Robinson, you are
3 excused. Yes, sir.

4 **BY A JUROR:** (By Juror 66) My name is Latarus
5 Holmes. I have got a felony.

6 **BY THE COURT:** All right, sir. Did you get his
7 name? All right, you are excused.

8 All right, anybody else? Okay. The next thing
9 that we are going to talk about are reasons that I
10 could excuse you from jury service. Ms. Halfacre has
11 already told you some, like if you are over 65, and
12 she has already told you about medical excuses. There
13 are some other excuses that I can entertain. But
14 before we go there, let me tell you what our situation
15 is.

16 This is Circuit Court, not Chancery Court. In
17 Chancery Court the Judge makes all the decisions. He
18 decides the law, and he decides the facts, and he
19 decides the case. It doesn't work that way in Circuit
20 Court. I get to decide the law, but the jury must
21 take that law and apply it to the facts as they see
22 it, and the jury makes the decision in Circuit Court.
23 So obviously, this system will not work unless you
24 participate. I consider serving on a jury to be one
25 of the most important duties that a citizen has in
26 this country. Next to voting, I think it is
27 absolutely the most important duty that you have.
28 Because as I said, without you, this system will not
29 work.

Jury Qualification

1 Now I know everybody almost in this room would
2 rather be somewhere else, and that includes everybody
3 in this room. But we are not. We are here and we all
4 have jobs to do, and your job is to be available for
5 jury service. And I have to have you and I need you.
6 The law allows me to excuse you for certain reasons.
7 If your reason does not meet that criteria, then I
8 cannot release you from jury service and excuse you.
9 You may have a very good excuse, but if it does not
10 meet the statutory reasons that I can consider, then
11 I'm not going to be able to release you, and I hope
12 you understand that. As I told you, whoever is
13 selected in this case will be sequestered for a period
14 of however long it takes to get this case tried. And
15 I have made arrangements for that which I will explain
16 to that jury when we get you.

17 Now having said all that, Ms. Halfacre has talked
18 to you about whether or not you are too sick to serve.
19 I can also release you if you have somebody in your
20 family who is so sick that you must take care of that
21 person, and there is nobody to take care of that
22 person while you are here. I can also -- and I see
23 some evidences right now; if you have small children
24 and there is nobody to take care of those children if
25 you were sequestered, then I can excuse you for that.
26 Who has that problem? Ma'am, I know you do. What is
27 your name?

28 **BY A JUROR:** (By Juror 71) Alicea Coggins.

29 **BY THE COURT:** There is nobody to take care of

Jury Qualification

1 your child?

2 BY A JUROR: No, my husband works on a boat, and
3 he is gone a month at a time.

4 BY THE COURT: All right, ma'am, I'm going to
5 excuse you.

6 BY MR. CARTER: What was her name again, Your
7 Honor?

8 BY THE CLERK: Alicia Coggins.

9 BY MR. HILL: Can we get the name and number?

10 BY THE COURT: There is no number.

11 BY THE CLERK: Alicia Coggins, number 71.

12 BY THE COURT: Well, I guess there was. I won't
13 know what the number is, and they won't either.

14 BY A JUROR: (By Juror 27) I have two children,
15 Your Honor, and my wife works. I'm a stay-at-home
16 dad.

17 BY THE COURT: There is nobody to keep -- who is
18 keeping like the child--

19 BY A JUROR: Well, my mother has got them right
20 now, but she is not really able to keep them. I mean
21 I wouldn't want her to keep them. She has been sick
22 in the past.

23 BY THE COURT: All right, what is your name, sir?

24 BY A JUROR: John M. Tabor III.

25 BY THE COURT: All right, Mr. Tabor, you are
26 excused.

27 BY A JUROR: Thank you, sir.

28 BY THE COURT: Yes, ma'am. You had somebody that
29 was sick?

Jury Qualification

1 **BY A JUROR:** (By Juror 146) Yes, sir. Like I
2 said, my son, and I'm the only one to take care of
3 him.

4 **BY THE COURT:** And what is your name, ma'am?

5 **BY A JUROR:** Geneva Williams.

6 **BY THE COURT:** Ms. Williams, I'm going to excuse
7 you. Yes, ma'am.

8 **BY A JUROR:** (By Juror 125) I have a three year
9 old daughter that she is -- my aunt is taking off work
10 today. She is at the doctor's office. She is most
11 likely going to be put in the hospital because she has
12 bronchitis.

13 **BY THE COURT:** And what is your name, ma'am?

14 **BY A JUROR:** Sandra Bain.

15 **BY THE COURT:** Ms. Bain, you are excused. Yes,
16 ma'am.

17 **BY A JUROR:** (By Juror 31) My name is Shirley
18 McCray McNeal. I have two minor children that are in
19 school today, and their father is in ICU in Greenwood,
20 and his condition is very guarded.

21 **BY THE COURT:** Okay, you are excused, ma'am.
22 Yes, ma'am. I see you brought yours with you too.
23 What is your name?

24 **BY A JUROR:** (By Juror 144) Elizabeth Taylor.

25 **BY THE COURT:** Ms. Taylor, you have nobody to
26 keep the child if you are here?

27 **BY A JUROR:** No, ma'am -- no, sir.

28 **BY THE COURT:** You are excused. Yes, ma'am.

29 **BY A JUROR:** (By Juror 141) My name is Donita

Jury Qualification

1 Richardson. I have a child; she is school age, but my
2 aunt keeps her who is confined to a wheelchair. So I
3 have no one. I work at night, and I have to take her
4 to and from school, and my aunt cannot do that for me.

5 **BY THE COURT:** Okay, and your name?

6 **BY A JUROR:** Donita Richardson.

7 **BY THE COURT:** Ms. Richardson, you are excused.

8 **BY A JUROR:** Thank you.

9 **BY THE COURT:** Yes, ma'am.

10 **BY A JUROR:** (By Juror 91) My name is Sandra
11 McCaskill, and I have a three year old that I have no
12 one to keep at night.

13 **BY THE COURT:** Okay, Ms. McCaskill, you are
14 excused. Yes, ma'am.

15 **BY A JUROR:** (By Juror 148) My name is Selena
16 Sykes. I have an 11 month old with a stomach virus
17 that my sister is watching, and she has diabetes.

18 **BY THE COURT:** Okay, you are excused ma'am. What
19 was your name again? They didn't get it.

20 **BY A JUROR:** Selena Sykes.

21 **BY THE COURT:** Okay. Yes, ma'am.

22 **BY A JUROR:** (By Juror 187) I have got three
23 minor children, two at home and no one to watch them
24 at all.

25 **BY THE COURT:** Okay, you have got them here with
26 you; right?

27 **BY A JUROR:** Yes, sir.

28 **BY THE COURT:** Okay, and I'm sorry, ma'am. You
29 told me your name while ago and--

Jury Qualification

1 **BY A JUROR:** Jessie Wilbanks.

2 **BY THE COURT:** Ms. Wilbanks, you are excused.

3 Yes, ma'am.

4 **BY A JUROR:** (By Juror 132) My name is Maria
5 Coffey, and I have two minors. I don't have anyone to
6 keep them.

7 **BY THE COURT:** Okay, did I get your name? I'm
8 sorry.

9 **BY A JUROR:** Maria Coffey.

10 **BY THE COURT:** All right, Ms. Coffey, you are
11 excused.

12 **BY A JUROR:** (By Juror 25) My name is Glenda
13 Bennett.

14 **BY A JUROR:** (By Juror 132) Excuse me.

15 **BY A JUROR:** (By Juror 25) I have a six year old
16 son, and I don't have anybody to keep him.

17 **BY THE COURT:** And your name was what?

18 **BY A JUROR:** Glenda Bennett.

19 **BY THE COURT:** Okay, Ms. Bennett, you are
20 excused. Yes, ma'am. You had something else?

21 **BY A JUROR:** (By Juror 132) Excuse me. It be
22 Maria Townsend on the list.

23 **BY THE COURT:** Okay, Ms. Townsend. Yes, ma'am.

24 **BY A JUROR:** (By Juror 13) I am Nina Ware. I am
25 a caretaker of my mother who is 85 years old.

26 **BY THE COURT:** There is nobody to do that if you
27 are--

28 **BY A JUROR:** No.

29 **BY THE COURT:** Okay, and your name again?

Jury Qualification

1 **BY A JUROR:** Nina Ware.

2 **BY THE COURT:** Thank you, ma'am. Yes, sir.

3 **BY A JUROR:** (By Juror 95) Perry Vaughn. I'm a
4 widow of nine years. I have three children in school.

5 **BY THE COURT:** Okay, and nobody to take them to--

6 **BY A JUROR:** No.

7 **BY THE COURT:** All right. Did you get his name?

8 **BY THE CLERK:** Yes, sir.

9 **BY THE COURT:** Yes, sir. You are excused. Yes,
10 sir.

11 **BY A JUROR:** (By unidentified juror) I am a bad
12 diabetic. I take insulin. I take high blood pressure
13 pills. I take fluid fills, and I have to go to the
14 bathroom frequently.

15 **BY THE COURT:** Okay, I have, I have that problem
16 occur a good deal, and I can accommodate that. I mean
17 we can make sure you get your pills, and if we have to
18 take a break, we can do that so that you can use the
19 restroom. All right, sir. (Juror sits down.)

20 Yes, ma'am.

21 **BY A JUROR:** (By Juror 92) I have a son who is
22 in school, and I'm the only one that take cares of
23 him.

24 **BY THE COURT:** Nobody else but you?

25 **BY A JUROR:** No, sir.

26 **BY THE COURT:** What-- I'm sorry. What were you
27 going to say?

28 **BY A JUROR:** I'm the only one to take care of
29 him.

Jury Qualification

1 **BY THE COURT:** All right, and your name?

2 **BY A JUROR:** Sharonda Baker.

3 **BY THE COURT:** Ms. Baker, you are excused. Okay.

4 If you own your own business and by being involved
5 with this trial, that business will shut down and
6 there is nobody else to run it while you are doing
7 this, I could excuse you for that. Does anybody have
8 that problem? Yes, ma'am.

9 **BY A JUROR:** (By Juror 80) My name is Sara
10 Holmes, and I am self-employed, and I am the only one
11 in my office. I dispatch trucks, and if I'm not
12 there, my business would shut down.

13 **BY THE COURT:** Okay, you are excused, ma'am.
14 Yes, sir.

15 **BY A JUROR:** (By Juror 63) I'm Wendell Stoker.
16 I work for Hargrove, Incorporated out of Greenwood,
17 and I have a chip route. There is no one else to run
18 it.

19 **BY THE COURT:** What would happen if you got sick?

20 **BY A JUROR:** The trucks would sit there at the
21 house.

22 **BY THE COURT:** Okay, and how would that affect
23 the business?

24 **BY A JUROR:** It would just be no way to -- I have
25 a potato chip route. There would be no way to work.

26 **BY THE COURT:** You run a potato chip route?

27 **BY A JUROR:** Yes, sir.

28 **BY THE COURT:** All right, what is your name, sir?

29 **BY A JUROR:** Wendell Stoker.

Jury Qualification

1 **BY THE COURT:** Okay, you are excused.

2 **BY A JUROR:** (By Juror 111) My name is Terry
3 Edwards, and I own Triple E Tax Service and Sporting
4 Goods in Duck Hill, and I'm the only one that runs it.
5 I have no employees, no one but me.

6 **BY THE COURT:** And your name, sir?

7 **BY A JUROR:** Terry Edwards.

8 **BY THE COURT:** All right, Mr. Edwards, you are
9 excused. Yes, sir.

10 **BY A JUROR:** (By Juror 157) I have a brick
11 laying business, and I'm the only one that can run it.
12 When I'm not there, my job will shut down.

13 **BY THE COURT:** Are you a brick layer?

14 **BY A JUROR:** Yes, sir.

15 **BY THE COURT:** And your name, sir?

16 **BY A JUROR:** Rufus Carpenter.

17 **BY THE COURT:** Mr. Carpenter, you are excused.

18 **BY A JUROR:** (By Juror 11) My name is James
19 Hester. I'm a store manager, and I just hired two new
20 employees, and I don't have anybody to run my store.

21 **BY THE COURT:** Okay, you don't have any
22 experienced personnel left?

23 **BY A JUROR:** No, sir.

24 **BY THE COURT:** And your name, sir, again?

25 **BY A JUROR:** James Hester.

26 **BY THE COURT:** All right, Mr. Hester, you are
27 excused. Anybody else? Yes, sir.

28 **BY A JUROR:** (By Juror 38) I work for myself.
29 I'm a plumber.

Jury Qualification

1 **BY THE COURT:** You are a plumber?

2 **BY A JUROR:** Yes, sir.

3 **BY THE COURT:** What is your name, sir?

4 **BY A JUROR:** Norton Rogers.

5 **BY THE COURT:** Mr. Rogers, you are excused.

6 **BY A JUROR:** (By Juror 39) I work for myself.
7 I'm a painter.

8 **BY THE COURT:** All right, sir, and your name?

9 **BY A JUROR:** Dale Moore.

10 **BY THE COURT:** Mr. Moore, you are excused. Okay,
11 anybody else got any reason they want to talk to me
12 about? Yes, ma'am.

13 **BY A JUROR:** (By Juror 113) We have got a quick
14 stop, and it's one that opens in the morning, and I'm
15 the only one that runs the register and the gas pumps.

16 **BY THE COURT:** There is nobody else to do that
17 but you?

18 **BY A JUROR:** Well, there is -- not really, not on
19 my shift.

20 **BY THE COURT:** Okay, do you own the convenience
21 store?

22 **BY A JUROR:** Part owner.

23 **BY THE COURT:** Okay. Well, what happens if you
24 get sick?

25 **BY A JUROR:** I go to work whether I'm sick or
26 not.

27 **BY THE COURT:** Well, I appreciate that, but I
28 mean if something happens where you couldn't be there,
29 what do they do?

Jury Qualification

1 **BY A JUROR:** I don't know what they would ever
2 do.

3 **BY THE COURT:** Okay, what is your name, ma'am?

4 **BY A JUROR:** Linda Nail.

5 **BY THE COURT:** Nail?

6 **BY A JUROR:** Yes, sir.

7 **BY THE COURT:** All right, you are excused, ma'am.
8 Yes, sir.

9 **BY A JUROR:** (By Juror 70) I'm James Seals. I'm
10 a full time college student.

11 **BY THE COURT:** You are a full time college
12 student?

13 **BY A JUROR:** Yes, sir.

14 **BY THE COURT:** Your name is what, sir?

15 **BY A JUROR:** James Seals.

16 **BY THE COURT:** Okay, you are excused, sir. Yes,
17 ma'am?

18 **BY A JUROR:** (By Juror 162) I'm Dorothy
19 Cunningham and I'm --

20 **BY THE COURT:** --All right, everybody be quiet
21 now; I can't hear. What?

22 **BY A JUROR:** I'm Dorothy Cunningham, and I do
23 domestic work. I'm the only one in my house. I clean
24 a different house every day.

25 **BY THE COURT:** You are a house cleaner?

26 **BY A JUROR:** Yes, sir.

27 **BY THE COURT:** And your name is Dorothy
28 Cunningham?

29 **BY A JUROR:** Yes, sir.

Jury Qualification

1 **BY THE COURT:** You are excused, ma'am. Yes, sir.

2 **BY A JUROR:** (By Juror 107) I'm a full time
3 college student.

4 **BY THE COURT:** Your name, sir?

5 **BY A JUROR:** Joel Robinson.

6 **BY THE COURT:** Mr. Robinson, you are excused.

7 **BY A JUROR:** (By Juror 104) I'm a full time
8 college student.

9 **BY THE COURT:** And your name?

10 **BY A JUROR:** Sherrie Knight.

11 **BY THE COURT:** Sherrie Knight?

12 **BY A JUROR:** Uh-huh.

13 **BY THE COURT:** Okay, you are excused, ma'am.

14 **BY A JUROR:** (By Juror 48) Kynyardda Campbell
15 Seals. I'm a full time college student.

16 **BY THE COURT:** Ms. Seals?

17 **BY A JUROR:** Yes.

18 **BY THE COURT:** You are excused. Yes.

19 **BY A JUROR:** (By Juror 192) Tarian Robinson. I
20 own my own business.

21 **BY THE COURT:** All right. What type of business
22 is that?

23 **BY A JUROR:** I sell clothes.

24 **BY THE COURT:** Huh?

25 **BY A JUROR:** I sell clothing.

26 **BY THE COURT:** Floors?

27 **BY MR. EVANS:** Clothes.

28 **BY THE COURT:** Oh, okay. There is nobody to run
29 that business but you?

Jury Qualification

1 BY A JUROR: No.

2 BY THE COURT: And your name, sir?

3 BY A JUROR: Tarian Robinson.

4 BY THE COURT: Okay, you are excused. Okay,
5 anybody else got any reason they want to talk to me
6 about? Yes, ma'am.

7 BY A JUROR: (By Juror 69) I home school my 11
8 year old grandson, and if I am called up, there won't
9 be anybody to work with him.

10 BY THE COURT: There is nobody else to teach him
11 but you?

12 BY A JUROR: No.

13 BY THE COURT: And your name, ma'am?

14 BY A JUROR: Elizabeth Ann Kilburn.

15 BY THE COURT: All right, you are excused, ma'am.
16 Yes, sir.

17 BY A JUROR: (By Juror 168) I don't have a
18 medical excuse, but I have a root canal to be done
19 tomorrow.

20 BY THE COURT: Have what?

21 BY A JUROR: Root canal.

22 BY THE COURT: Is that an emergency situation?
23 In other words, are you in pain and all right now?

24 BY A JUROR: Yes, sir. I have got--

25 BY THE COURT: You have got an abscess?

26 BY A JUROR: Something needs to be done; yes,
27 sir.

28 BY THE COURT: Well, I understand that, but is
29 there any way -- is it a situation that can be

Jury Qualification

1 rescheduled, or do you have to have it done tomorrow?

2 **BY A JUROR:** I have to take more antibiotics.

3 **BY THE COURT:** Okay, you have got an abscess?

4 **BY A JUROR:** Yes, sir.

5 **BY THE COURT:** All right, your name, sir?

6 **BY A JUROR:** Clift Parks.

7 **BY THE COURT:** All right, Mr. Parks, you are
8 excused.

9 **BY A JUROR:** Thank you, sir.

10 **BY THE COURT:** Yes, ma'am?

11 **BY A JUROR:** (By Juror 103) My name is Susan
12 Robertson. I'm a clinical nurse and office manager of
13 a cancer institute. I am not the only one there, but
14 I'm the only one who does certain managerial duties,
15 and I give chemotherapy all day every day.

16 **BY THE COURT:** Okay, well, they have got somebody
17 else can do that though, can't they?

18 **BY A JUROR:** They have one other person, but
19 there are some jobs I do that only I can do, that only
20 I have computer access to do.

21 **BY THE COURT:** All right, ma'am, you are excused.
22 Yes, ma'am.

23 **BY A JUROR:** (By Juror 64) My name is Emma
24 Trotter. I'm a relative.

25 **BY THE COURT:** Okay, we will get to that later.
26 Yes, sir.

27 **BY A JUROR:** (By Juror 135) What about
28 depression?

29 **BY THE COURT:** I think we are all depressed a

Jury Qualification

1 little bit. (Laughter.)

2 **BY A JUROR:** I take depression medicine, and I
3 take (inaudible).

4 **BY THE COURT:** What, sir?

5 **BY A JUROR:** I can't cope, you know, with fights.

6 **BY THE COURT:** Okay, if you are on, if you have
7 taken the medication, are you able to cope with it?

8 **BY A JUROR:** Not 100 percent, no, sir.

9 **BY THE COURT:** All right. Your name, sir?

10 **BY A JUROR:** John Costilow.

11 **BY THE COURT:** All right, Mr. Costilow, I'm going
12 to excuse you. Yes, ma'am?

13 **BY A JUROR:** (By Juror 156) My name is Monica
14 Sawyer, and I'm a part time college student.

15 **BY THE COURT:** Okay, by that what do you mean?
16 How often do you go?

17 **BY A JUROR:** Once a week.

18 **BY THE COURT:** Okay. Where do you go?

19 **BY A JUROR:** Holmes in Grenada.

20 **BY THE COURT:** Okay, if you missed one time, how
21 would that affect you?

22 **BY A JUROR:** Well, we are being tested this week.

23 **BY THE COURT:** Okay. What is your name?

24 **BY A JUROR:** Monica Sawyer.

25 **BY THE COURT:** You are excused, Ms. Sawyer.

26 Okay. If y'all will stand, the clerk has got another
27 oath for you.

28 **BY THE CLERK:** If you will raise your right hand.
29 You and each of you do solemnly swear or affirm that

Jury Qualification

1 you will well and truly try the issues and execute the
2 writs of inquiry that may be submitted to you or left
3 to your decision by the Court and a true verdict give
4 according to the evidence so help you God?

5 **BY THE PROSPECTIVE JURORS:** I do.

6 **BY THE COURT:** We are going to take a break right
7 now. They have to make me a new list of those of you
8 who are left for jury service. That generally takes
9 about 30 minutes or so. When we get that list made,
10 then we are going to call you back in here. At that
11 time you will each have a number, and we are going to
12 start seating you over here on this side. The
13 bailiffs will tell you where to go, and they will give
14 you the numbers.

15 Then we are going to do what is called the voir
16 dire examination, which is simply a procedure that we
17 go through to determine who can be a fair and
18 impartial juror on this particular case. Until that
19 time though, you have a break. I ask that you not
20 leave the courthouse or the courthouse area so that
21 you are available, and we will get started as soon as
22 we get this list made.

23 (DURING THE MORNING RECESS ON FEBRUARY 2, 2004,
24 JUROR NUMBER 118, MR. BILLY JOE BURT, APPROACHED THE COURT
25 AND STATED THAT HE COULD NOT READ AND WRITE, AND HE WAS
26 EXCUSED. WHEN THE LIST WAS TYPED, COURT WAS CALLED BACK TO
27 ORDER WITH ALL COUNSEL AND THE DEFENDANT PRESENT BUT WITH THE
28 COURT OUT. JURORS' NAMES WERE CALLED, AND THEY WERE GIVEN
29 NUMBER CARDS AND SEATED IN ORDER AS SHOWN:)

Voir Dire by the Court

1 **BY THE BAILIFF:** Ms. Julie is going to call your
2 name, and I'm going to give you a number, and you are
3 going to be seated in the order that the your name and
4 number is called. And we are going to start right
5 here and go one, two, three, four, five and go all the
6 way across to right here and then start again and go
7 across. Just be sure you keep this; hold to it.

8 **BY THE CLERK:** Roll call one more time.
9 (The jurors were called and seated in order.

10 Afterwards, the Court entered the courtroom.)

11 **BY THE COURT:** The Court calls cause number
12 2003-71, State of Mississippi versus Curtis Giovanni
13 Flowers. What says the State?

14 **BY MR. EVANS:** The State of Mississippi is ready
15 for trial, Your Honor.

16 **BY THE COURT:** And what says the Defendant?

17 **BY MR. CARTER:** The Defendant is ready for trial,
18 Your Honor.

19 VOIR DIRE EXAMINATION BY THE COURT:

20 In some cases, and especially in capital cases, it
21 is my practice - I learned this long ago - to come down off
22 the bench and come down here closer to you where y'all can
23 hear me, and we can communicate during this process because
24 that's what this process is all about is communication
25 between us. This is called the voir dire examination. That
26 is a term that simply means we are going to have a question
27 and answer period where I ask you some questions concerning
28 your service on this particular case. When I get through,
29 there will be some questions that the attorneys have also

Voir Dire by the Court

concerning your service on this case.

None of the questions that we have is for any purpose other than to find out who could be a fair and impartial juror on this particular case. Every case is different. Every case involves different people. It involves different facts, and therefore it affects jurors and everybody else differently. Your life experiences may be such that you could be fair on one case and not fair on another one. Your relationships to persons involved could be such that you could be fair on another case but not be fair on this one. There are no wrong answers that you can give me to any of these questions that I'm going to ask you. The only way you could give me a wrong answer is if I ask a question and it applies to you, and you do not answer it. That would not be -- that would be not what I want you to do. I am here to get information from you.

Between myself and the attorneys, we will make the determination later as to who we think can be fair and impartial based on what you tell us, but we have to have the information in order to do that. There again, if you have opinions and stuff, I'm going to just need to know them so that I can make those evaluations.

The District Attorney in this district is Doug Evans. He is here today as is his assistant, Clyde Hill. They will be trying this case for the State of Mississippi as they do in all state cases. This is Mr. Evans right here and Mr. Hill right here.

Mr. Flowers is represented here today by Andre de Gruy. This is Mr. de Gruy here and Ray Charles Carter. That

Voir Dire by the Court

is Mr. Carter right there, and Stacy Ferraro. Thank you.

Are any of you related by blood or marriage to any of the attorneys? (One hand goes up.) Yes, ma'am. I'm going to ask you if you would -- we have got to make a record of all of this. So when you respond to a question of mine, if you would stand up and hold up your number so we will know who you are.

BY THE COURT:

Q. All right, that is number 37. And Ms. Trotter?

A. (BY JUROR 37, MS. EMMA M. TROTTER) Yes, sir.

Q. You are kin to Mr. Carter?

A. Mr. Flowers.

Q. Okay, well, I'm going to get to that question in a minute. Right now I want to know who is kin to the lawyers.

A. Oh.

Q. Are any of you related -- yes, sir.

A. (BY JUROR NO. 38, MR. WILEY CHARLES PREWITT, JR.) Number 38. I was married to Stacy Ferraro. We are now divorced.

Q. All right, Mr. Prewitt, would that fact affect you at all in this case and keep you from being fair and impartial?

A. I don't believe so. It would be a distraction.

Q. It would be a distraction?

A. Yes, sir.

Q. All right, sir. Thank you, sir. Anybody else? .

How many of you have ever been represented by any of the attorneys in this case? Now when it comes to the State of Mississippi, that would mean have you ever had a

Voir Dire by the Court

1 case, a criminal case in which Mr. Evans or his office
2 represented your side of that case? All right, sir.

3 A. (BY JUROR NO. 44, MR. WILLIAM T. YATES) Two years--

4 Q. --I need your number, sir.

5 A. 44.

6 Q. All right.

7 A. Two years ago I was robbed and shot.

8 Q. I'm sorry?

9 A. I was robbed and shot in a store, and they
10 prosecuted the two guys that did it.

11 Q. All right, Mr. Yates, how long ago was that?

12 A. Two years ago, be two years ago this July.

13 Q. So it is over with; is that correct?

14 A. Sir?

15 Q. That is over with?

16 A. Yes, sir.

17 Q. Okay. Is there anything about that fact that would
18 affect you in this case and keep you from being fair and
19 impartial?

20 A. I don't believe I need to be sitting on no, you
21 know. I don't think so.

22 Q. Well, of course, there are going to be a lot of
23 folks that would answer a lot of questions I have got that
24 way. What I need to know right now is whether or not the
25 fact that Mr. Evans represented your side of the case would
26 affect whether you could be fair and impartial in this case?

27 A. I don't believe -- I just don't, I don't want to
28 sit on the jury because of the reason I don't believe I could
29 do justice right on it.

Voir Dire by the Court

1 Q. Okay. I'm going to ask that question in a minute,
2 Mr. Yates. But right now the question is whether the fact
3 that Mr. Evans represented your side of the case would affect
4 you at all?

5 A. No, sir.

6 Q. Okay, thank you. Anybody else? Yes, sir, number
7 23. Mr. James.

8 A. (BY JUROR NO. 23, MR. TIMOTHY RAY JAMES) I have a
9 small claim in Mr. Evans' office now.

10 Q. Where is he?

11 A. It's just a claim against a bad check, but it's in
12 his office being handled now.

13 Q. Would that affect you at all in this case?

14 A. (Mr. James shakes his head.)

15 Q. Thank you, sir. Anybody else?

16 Okay, how about anybody that has been on the other side of
17 the State of Mississippi in any manner where the State
18 represented a position that was adverse to whatever position
19 yours was or a family member's was? Okay.

20 As to the other attorneys, have any of these
21 attorneys ever represented any of you or been on the other
22 side of a lawsuit from you? Okay.

23 The Defendant in this case is Mr. Curtis Flowers.
24 This is him right here. (Defendant stands.) All right,
25 thank you, Mr. Flowers. Are any of you related by blood or
26 marriage to Mr. Flowers? All right, number 37. Ms. Trotter?

27 A. (BY JUROR NO. 37, MS. EMMA M. TROTTER) Yes.

28 Q. All right. And what relationship are you,
29 Ms. Trotter?

Voir Dire by the Court

1 A. Cousins on my mother's, my mother's.

2 Q. Okay. Would that relationship affect you in this
3 case and keep you from being fair and impartial?

4 A. I think so.

5 Q. Thank you, ma'am. Number 21, Ms. Knight.

6 A. (BY JUROR NO. 21, MS. BERNITA VANESSA KNIGHT) I
7 have two aunts married to two of his uncles.

8 Q. Okay. Would that relationship affect you in this
9 case and keep you from being fair and impartial?

10 A. I feel that it would.

11 Q. Thank you, ma'am. Number 59. Mr. Campbell?

12 A. (BY JUROR NO. 59, MR. ARCHIE LEE CAMPBELL) He is a
13 cousin.

14 Q. He is a cousin of yours?

15 A. Yes, sir.

16 Q. Would that fact affect you at all in this case and
17 keep you from being fair and impartial?

18 A. Yeah, I believe it would.

19 Q. Thank you, sir. Yes, sir, number 69, Mr. Baskin?

20 A. (BY JUROR NO. 69, MR. DARYL ELIAS BASKIN) My
21 cousin is married to his sister.

22 Q. Your cousin is married to his sister? Would that
23 fact, would that relationship affect you to where you
24 couldn't be fair and impartial?

25 A. Yeah.

26 Q. All right. Number 98, Ms. Curtis. How are you
27 related?

28 A. (BY JUROR NO. 98, MS. CATHY RENE CURTIS) He is my
29 cousin.

Voir Dire by the Court

1 Q. Would that relationship affect you to the point
2 where you could not be fair and impartial?

3 A. Yes, sir. It would.

4 Q. Thank you. Number 1, Ms. Lockhart. How are you
5 related?

6 A. (BY JUROR NO. 1, MS. SANDRA ANN LOCKHART) He is my
7 cousin.

8 Q. Would that affect you to the point where you
9 couldn't be fair and impartial?

10 A. Yes.

11 Q. Okay. Number 14, Ms. Forrest.

12 A. (BY JUROR NO. 14, MS. STEPHANIE FORREST) He is my
13 cousin.

14 Q. Would that affect you to the point to where you
15 couldn't be fair and impartial?

16 A. Yes.

17 Q. Okay. Number 43. Ms. Forrest.

18 A. (BY JUROR NO. 43, MS. MAGGIE LOU FORREST) Yes.
19 Cousin.

20 Q. Would that relationship affect you to the point
21 where you could not be fair and impartial?

22 A. To be honest, I am sure it would.

23 Q. Thank you, ma'am. Number 65. Ms. Jones, how are
24 you related to him?

25 A. (BY JUROR NO. 65, MS. TAKETA C. JONES) He is my
26 cousin.

27 Q. Would that fact affect you at all in this case and
28 keep you from being fair and impartial?

29 A. Yes.

Voir Dire by the Court

1 Q. It would? Okay. Number 78, Mr. Richardson.

2 A. (BY JUROR NO. 78, MR. RAY VURN RICHARDSON) My
3 cousin. He is my cousin.

4 Q. Would that relationship affect you to the point to
5 where you don't feel that you could be fair and impartial?

6 A. Yes.

7 Q. Okay. Number 80, Mr. Moore.

8 A. (BY JUROR NO. 80, MR. LEONARD MOORE) Yes.

9 Q. How are you related to him?

10 A. My cousin.

11 Q. Would that relationship affect you to the point
12 where you could not be fair and impartial?

13 A. Yes, sir.

14 Q. Sir?

15 A. Yes, sir.

16 Q. Thank you. Number 104, Mr. Loggins.

17 A. (BY JUROR NO. 104, MR. DENNIS PAUL LOGGINS) Yes.

18 Q. What is your relationship?

19 A. Cousin.

20 Q. Would that affect you to the point where you
21 couldn't be fair and impartial?

22 A. Yes, it would.

23 Q. And Ms. Hopkins?

24 A. (BY JUROR NO. 105, MS. LEANNE HOPKINS) Yes. He is
25 my cousin.

26 Q. Would that affect you to the point where you could
27 not be fair and impartial?

28 A. Yes.

29 Q. Number 33.

Voir Dire by the Court

1 A. (BY JUROR NO. 33, MS. MARCIA A. BASKIN) His sister
2 is married to my cousin.

3 Q. His sister is married to your cousin? Would that
4 relationship with the family affect you, Ms. Baskin, to the
5 point where you couldn't be fair and impartial?

6 A. Yes.

7 Q. All right, anybody else? Yes, sir, number 10.
8 Mr. Moore.

9 A. (BY JUROR NO. 10, MR. JAMES THOMAS MOORE) I don't
10 think so. My son, my stepson is a character witness in this
11 case, and also I have a granddaughter involved in this
12 family.

13 Q. Okay. Would those relationships affect you to
14 where you couldn't be fair and impartial?

15 A. Yes.

16 Q. Thank you, sir. Anybody else?

17 How many of you are related -- well, first, how
18 many of you are in law enforcement, serve in law enforcement
19 at this time? Yes, ma'am. If you would stand up, please.
20 What is your number?

21 A. (BY JUROR NO. 101, MS. NYKEEM DAWN FORD) 101.

22 Q. Number 101. Ms. Ford, what do you do in law
23 enforcement?

24 A. Correction officer at the Grenada County Jail.

25 Q. At the Grenada County Jail. Would that fact affect
26 you in this case and keep you from being fair and impartial?

27 A. (Ms. Ford shakes her head.)

28 Q. I can't hear you, ma'am.

29 A. No, sir.

Voir Dire by the Court

1 Q. Okay, thank you. Yes, sir, number 91.

2 A. (BY JUROR NO. 91, MR. LARRY CASTLE) I'm a sworn
3 officer with Mississippi Department of Wildlife, Fisheries
4 and Parks. Right now I just serve as a (inaudible)
5 administrator.

6 Q. Mr. Castle, would that affect you at all in this
7 case and keep you from being fair and impartial?

8 A. No, sir.

9 Q. Thank you. Anybody else? Yes, sir, number 12.
10 Mr. Robinson?

11 A. (BY JUROR NO. 12, MR. SIMON L. ROBINSON) He is a
12 good friend of mine. Me and him are just good friends.

13 Q. Who is this? Mr. Flowers?

14 A. Yes.

15 Q. Okay. Mr. Robinson, would the fact that you and he
16 are good friends affect you in this case and keep you from
17 being fair and impartial?

18 A. Yes, it would.

19 Q. Okay. How many of you have been in law enforcement
20 in the past?

21 Yes, sir. Mr. Yates?

22 A. (BY JUROR NO. 44, MR. WILLIAM T. YATES) I am.

23 Q. You have?

24 A. Yes, sir.

25 Q. Mr. Yates, would that affect you; would that
26 particular thing affect you to the point where you couldn't
27 be fair and impartial?

28 A. I was working on the Sheriff's Department part time
29 when they did the investigation on some of this.

Voir Dire by the Court

1 Q. Okay. All right, Mr. Yates. Thank you, sir.

2 Anybody else been in law enforcement in the past? Yes,

3 ma'am. If you would stand up, please. Number 76.

4 A. (BY JUROR NO. 76, MS. ANNE ELIZABETH AUSTIN) I
5 work for the Winona Police Department as a radio dispatcher.

6 Q. Would that affect you in this matter at all?

7 A. No.

8 Q. Thank you, ma'am. How many of you have got
9 relatives in law enforcement? (Many hands go up.)

10 All right, let's go here on the first row. I will go to you,
11 number 4. Those of you -- there are some of you that have
12 indicated because of your relationship to Mr. Flowers, that
13 you could not be fair and impartial. At this particular
14 point, you don't have to answer these questions that I'm
15 asking in regard to these things. If we have other questions
16 for you, I will come back to you. All right. Number 4 is
17 Ms. Farmer. Who is--

18 A. (BY JUROR NO. 4, MS. ELLA B. FARMER) --Farmer of
19 Grenada Police Department.

20 Q. Who?

21 A. Alex Farmer.

22 Q. Alex. Okay, would that relationship affect you in
23 this case and keep you from being fair and impartial?

24 A. Uh-uh.

25 BY MR. CARTER: Your Honor, I didn't hear what
26 she said.

27 BY THE COURT: She said no. She is kin to Alex
28 Farmer, who is an officer in Grenada. The fact is he
29 is a constable and an officer; isn't that correct?

Voir Dire by the Court

1 **BY A JUROR:** (No. 4) Yes.

2 **BY THE COURT:** And she said that would not affect
3 her.

4 BY THE COURT:

5 Q. Yes, ma'am. Number 17. Ms. Fielder.

6 A. (BY JUROR NO. 17, MS. GLORIA T. FIELDER) My
7 husband was a deputy when this occurred. My first cousin,
8 Robert Tompkins, was the Sheriff. My father-in-law was chief
9 of police.

10 Q. Okay, with all those relationships and especially
11 in light of when they, when this took place, would that
12 affect you at all in this case?

13 A. I do not believe so.

14 Q. Let me ask you this. Could you listen to the
15 evidence in this case and base your decision on the evidence
16 that you hear in this court, the instructions on the law that
17 I give you, and after consultation with your fellow jurors,
18 then make a decision based on that?

19 A. I want to hope that I could.

20 Q. Okay, of course, you understand the importance of
21 this question, so I need for you to tell me if you can or
22 not.

23 A. Yes, I can.

24 Q. Thank you, ma'am.

25 Let me, before I go further, because I was going to cover
26 this ground in a minute anyhow, but we will do it now. What
27 we are looking for is jurors who can try this case on the
28 evidence that comes from this witness stand right behind me
29 and take the law -- I will give at the end of the case

Voir Dire by the Court

1 written instructions on the law. That is going to be the law
2 in this case, and you are going to be directed to use that
3 law and take that law and apply it to the facts, and then
4 consult with your fellow jurors, and then reach a decision in
5 this case. You are not to speculate on things that are not
6 asked or speculate on the things that do not come into
7 evidence. You are entitled to use your common sense. You
8 are entitled to use your sound, honest judgment. In
9 evaluating the evidence, you are entitled to call on your own
10 life experiences, but you must make your decision on the
11 evidence that comes from the witness stand. In other words,
12 we don't want jurors that have come in here and already got
13 their mind made up about this case, and it is going to take
14 sworn testimony to overcome that. You must come in with an
15 open mind and accept what I'm telling you, that you have to
16 make this decision under your oath as jurors on the evidence
17 that you hear, not what you might have heard on the street,
18 not maybe what you have read or anything else. You must make
19 it on this evidence and the law that I give you and the
20 consultation of fellow jurors, and that's how the decision is
21 made.

22 Do each of you understand that? Will each of you
23 do that? Is there anybody here that will not do that?
24 Number 5.

25 A. (BY JUROR NUMBER 5, MR. DAVID CLARK ROGERS) I have
26 got a problem. Carmen Rigby was a big part of my family's
27 life. She babysat my daughter, and I just don't know after
28 seeing pictures of her--

29 Q. Okay. Well, let me just, does that relationship,

Voir Dire by the Court

1 Mr. Rogers, affect you to where you could not be fair and
2 impartial?

3 A. Yes, it does.

4 Q. Okay, thank you. That is the type of answers we
5 are going to need, but don't let me get too far ahead of
6 myself. Now let's get back to the -- y'all know what I am
7 expecting you to do. Let me get back. I will get lost if I
8 don't stay on point. Let's go back to the law enforcement.
9 Yes, ma'am. If you would stand up, please. Number 62. Ms.
10 Woods?

11 A. (BY JUROR NO. 62, MS. PATRICIA ANN WOODS) Yes,
12 sir.

13 Q. And I think my question was anybody, any of your
14 family in law enforcement?

15 A. My son is a policeman with Batesville Police
16 Department.

17 Q. Would that fact affect you at all in this case?

18 A. No, sir.

19 Q. Thank you, ma'am. Yes, ma'am. Number 63. And
20 Ms. Eden?

21 A. (BY JUROR NO. 63, MS. CHINCHONA PERFEIT EDEN) Yes.

22 Q. Who?

23 A. Ickret Bennett is my cousin.

24 Q. Who?

25 A. Ickret Bennett.

26 Q. And where is he an officer?

27 A. Here in Winona.

28 Q. Would that fact affect you at all in this case?

29 A. No.

Voir Dire by the Court

1 Q. Thank you, ma'am. Number 51. Mr. Davis.

2 A. (BY JUROR NO. 51, MR. JEFFREY EUGENE DAVIS) Yes,
3 sir. I am kin to Calvin Young here in the Winona Police
4 Department.

5 Q. Okay, would that fact or relationship affect you at
6 all in this case?

7 A. No, it wouldn't.

8 Q. Thank you. Anybody over on this side? Yes, ma'am?
9 Number 28.

10 A. (BY JUROR NO. 28, MS. CASSANDRA EVANS) Kenneth
11 Woods.

12 Q. Who?

13 A. Kenneth Woods.

14 Q. Kenneth Woods. Ms. Evans, would that affect you at
15 all in this case?

16 A. No, sir.

17 Q. Where is he an officer?

18 A. Highway patrolman.

19 Q. In this county?

20 A. I think so.

21 Q. Thank you, ma'am. Yes, 29. Mr. Mitchell.

22 A. (BY JUROR NO. 29, MR. GREGORY HICKS MITCHELL) My
23 son-in-law is a policeman in Grenada.

24 Q. Would that fact affect you at all in this case?

25 A. No.

26 Q. Okay. Number 7. Ms. Johnson?

27 A. (BY JUROR NO. 7, MS. KAREN DIANE JOHNSON) John and
28 David Johnson.

29 Q. Okay, David is a deputy sheriff. John is an

Voir Dire by the Court

1 investigator for the District Attorney's Office. Ms.

2 Johnson, would that affect you at all in this matter?

3 A. No.

4 Q. Okay. Have you discussed this matter with either
5 one of them?

6 A. No.

7 Q. Okay. And you are their sister?

8 A. My husband and them are first cousins.

9 Q. Okay. You could set aside that relationship and be
10 fair and impartial in deciding this case on the basis that I
11 told you?

12 A. Yes, sir.

13 Q. Okay. Ms. Tompkins.

14 A. (BY JUROR NO. 8, MS. JUDY TOMPKINS) In-laws, if
15 that counts.

16 Q. That does.

17 A. Okay, currently with the Wildlife and Fisheries,
18 and then my husband's first cousin was Sheriff when this
19 occurred.

20 Q. Ms. Tompkins, would that affect you at all and keep
21 you from being fair and impartial?

22 A. No.

23 Q. Okay, number 20.

24 A. (BY JUROR NO. 20, MR. GLOSSIE MAGEE, JR.) I have--

25 Q. --Mr. Magee. Would you stand up, please, sir.

26 A. I have a brother on the Greenwood Police
27 Department. May I add I have been knowing Mr. Flowers since
28 he was a little boy.

29 Q. Okay. Would that, your relationship with him--

Voir Dire by the Court

1 A. -- It would.

2 Q. -- affect you to the point where you couldn't be
3 fair and impartial?

4 A. It would.

5 Q. Thank you, Mr. Magee. Number 11.

6 A. (BY JUROR NO. 11, MR. DAVID E. MILLER) I have a
7 cousin with the police department in Grenada.

8 Q. Mr. Miller?

9 A. Yes.

10 Q. Cousin on the police department in Grenada?

11 A. Yes.

12 Q. Would that relationship affect you at all in this
13 case?

14 A. No.

15 Q. All right. Yes, ma'am; if you would stand up,
16 please.

17 A. (BY JUROR NO. 24, MS. EMILY JEAN BYARS) My husband
18 works part time deputy in Carroll County.

19 Q. Ms. Byars, would that affect you at all in this
20 case and keep you from being fair and impartial?

21 A. No.

22 Q. Number 34.

23 A. (BY JUROR NO. 34, MS. GAY ELISABETH EVALDI) My
24 husband.

25 Q. Ms. Evaldi; is that right?

26 A. My husband is a retired F.B.I. agent, and my father
27 and my brother are also.

28 Q. Okay, would that fact affect you at all in this
29 case?

Voir Dire by the Court

1 A. No, sir.

2 Q. Okay. Ms. Hathcock, number 49.

3 A. (BY JUROR NO. 49, MS. WANDA G. HATHCOCK) I have
4 cousins in the Game and Fish Commission, and also in-laws,
5 cousins in-laws that are retired from the Mississippi Highway
6 Patrol.

7 Q. Would that affect you at all in this matter and
8 keep you from being fair and impartial?

9 A. No.

10 Q. Okay. Number 47, Ms. Sproles.

11 A. (BY JUROR NO. 47, MS. THERESA D. SPROLES) Bubba
12 Nix, he is my brother-in-law. He works for the Montgomery
13 County Sheriff's Department.

14 Q. Would that fact affect you at all in this case and
15 keep you from being fair and impartial?

16 A. No, sir.

17 Q. All right. Number 61.

18 A. (BY JUROR NO. 61, MS. ELSIE REBECCA HOLIFIELD) I
19 have a cousin who is in Kilmichael, Donnie McDaniel, and
20 several, two that have retired from the highway patrol.

21 Q. Ms. Holifield, would that affect you at all in this
22 case and keep you from being fair and impartial?

23 A. No, sir.

24 Q. All right. Number 71, Ms. Bennett?

25 A. (BY JUROR NO. 71, MS. CATRENA LEE BENNETT) My
26 uncle is a police officer in Grenada, and my husband is a
27 parole officer in Grenada.

28 Q. Okay, would those relationships affect you to the
29 point where you couldn't be fair and impartial?

Voir Dire by the Court

1 A. No.

2 Q. All right. Mr. Yates.

3 A. (BY JUROR NO. 44, MR. WILLIAM T. YATES) My brother
4 is the, works at the correction center down at Vaiden.

5 Q. Okay, your brother is Jerry Yates; is that correct?

6 A. Yes.

7 Q. All right, would that affect you at all in this
8 case?

9 A. No.

10 Q. Okay.

11 A. Did you miss what I said while ago? I worked with
12 the Sheriff's Department back when this--

13 Q. -- No, I got it. I got it.

14 Number 84?

15 A. (BY JUROR NO. 84, MR. MARVIN ABEL) Yes, I have a
16 brother-in-law who is a retired highway patrolman.

17 Q. Mr. Abel, would that affect you at all in this case
18 and keep you from being fair and impartial?

19 A. No, but I also have a nephew who is a highway
20 patrolman and a son-in-law who is with the game and fish.

21 Q. Would that affect you at all?

22 A. No.

23 Q. Okay. Number 100, Ms. Knox-Russell?

24 A. (BY JUROR NO. 100, MS. MICHELLE A. KNOX-RUSSELL)
25 Yes. My father is a retired policeman with the Winona Police
26 Department.

27 Q. Would that affect you at all in this matter and
28 keep you from being fair and impartial?

29 A. No.

Voir Dire by the Court

1 Q. Okay. Number 93.

2 A. (BY JUROR NO. 93, MS. BETTY D. HERRING) My husband
3 retired with the Fisheries and Wildlife, and Larry Castle is
4 my brother-in-law.

5 Q. Mr. Herring, would that affect you at all in this
6 matter and keep you from being fair and impartial?

7 A. No, sir.

8 Q. All right. Number 79 is Mr. Minyard?

9 A. (BY JUROR NO. 79, MR. GLENN EDWIN MINYARD) I have
10 got a brother-in-law on the Sheriff's Department in Winona.

11 Q. Would that affect you at all in this matter and
12 keep you from being fair and impartial?

13 A. No, sir.

14 Q. Thank you.

15 I think most of y'all have probably already
16 answered this next part of that question, but I'm going to
17 ask it again to be sure. And if you have answered it, you
18 don't have to answer it again. But how many of you have had
19 members of your family who have been in law enforcement but
20 are not now in law enforcement? Okay.

21 The way a matter gets to this point is by
22 indictment. The way an indictment comes about is that an
23 alleged violation of the law is presented to a grand jury.
24 We have a grand jury, we have two different grand juries a
25 year in each county. The grand jury will serve for six
26 months, and then a new one will come in and take its place.
27 The grand juries consist of 20 people. Out of that twenty,
28 twelve must vote to return an indictment for the case to go
29 any further. At the grand jury stage, the only evidence that

Voir Dire by the Court

1 is presented is that of the State. All of the witnesses are
2 not presented. The grand jury does not have the benefit of
3 my instructions on the law, and they do not hear the whole
4 case. And they also hear some evidence that probably would
5 not be admissible at trial. The reason for all that is they
6 don't have to determine the guilt or innocence of anybody.
7 They only have to determine whether or not they think a crime
8 has been committed, and if so, do they think there is enough
9 evidence for the matter to go forward and have a trial.

10 If so and if twelve of them think that has
11 occurred, then they vote for an indictment, and we would
12 return that indictment. If less than twelve, if they don't
13 get twelve votes, then they don't get an indictment. Now
14 when we select the jury for this case, there will be twelve
15 members of the jury. All twelve members will have to vote
16 unanimously in order to return a verdict. The petit jury,
17 which you will be, will hear all of the evidence, and they
18 will get my instructions on the law, and they will have the
19 right to take all that and deliberate with each other. But
20 then they must unanimously decide to return a verdict,
21 whereas a grand jury must only return, or only have 12 out of
22 20.

23 Therefore, the indictment in this case is
24 absolutely no evidence of Mr. Flowers' guilt of anything, and
25 you must not consider it as such. He is entitled -- and I
26 will instruct you that he is presumed innocent until such
27 time as the State proves his guilt beyond a reasonable doubt,
28 and the State must prove that. He does not have to prove
29 anything. He does not have to testify. If he does not

Voir Dire by the Court

1 testify, I will give you an instructions that you cannot take
2 the fact that he did not testify and use that as any evidence
3 against him in returning a verdict.

4 Do each of you understand all that? That the
5 indictment is not evidence of guilt and that a defendant is
6 presumed innocent until such time as the state proves his
7 guilt beyond a reasonable doubt? Do you all understand that?
8 Is there anybody that does not understand that?

9 Is there anybody that will not follow that
10 instruction on the law?

11 As I said, the burden on the State is to prove this
12 beyond a reasonable doubt. Does anybody feel that that
13 burden should be something else? That it either should be
14 higher or lower or just something else? Is there anybody
15 that will not require the State to have that burden? Okay.

16 How many of you have ever been the victim of any
17 crime but especially a crime of violence or had any member of
18 your family who has been a victim of a crime or especially a
19 crime of violence?

20 Q. All right. Yes, ma'am. Number 6. Ms. Bell?

21 A. (BY JUROR NO. 6, MS. CINDY BELL) Uh-hum. In 1985
22 my husband's brother was murdered in Grenada.

23 Q. Okay.

24 A. And then I had a, my husband's first cousin was
25 murdered in Atlanta, Georgia, about three years ago.

26 Q. All right, would the fact that those things have
27 happened in your family, affect you to the point to where you
28 couldn't be fair and impartial especially in a case like we
29 have here today?

Voir Dire by the Court

1 A. Yes, sir.

2 Q. Thank you, ma'am.

3 Mr. Yates, you don't have to answer it. From what
4 you have already told me, you don't have to answer this
5 question. (That was number 44.) Number 50. Ms. Pearson.

6 A. (BY JUROR NO. 50, MS. VICKI RENAE PEARSON)
7 Uh-hum.

8 Q. Tell me-- I don't really need to know a lot about
9 the facts. I just need to know when it happened and what
10 occurred.

11 A. I'm not sure; I think it was around, um, I think it
12 was when my daughter was born, around '96. My husband's
13 uncle was killed, and then my cousin on my side, and then my
14 husband's cousin on his side.

15 Q. Okay, were those all the same incident or different
16 instances?

17 A. No, these were all separate.

18 Q. Okay. Would the fact that you have had all that
19 happen affect you to the point where you couldn't be fair and
20 impartial on this case, particularly in light of what the
21 nature of this case?

22 A. No.

23 Q. Okay. Thank you, Ms. Pearson.

24 Number 18.

25 A. (BY JUROR NO. 18, MS. ALICE FAYE VANCE) I was
26 related to one of the victims in this case.

27 Q. Okay. Ms. Vance, who were you related to?

28 A. Carmen Rigby.

29 Q. Would that fact affect you to the point where you

Voir Dire by the Court

1 couldn't be fair and impartial?

2 A. Yes, sir.

3 Q. Number 62. Ms. Woods.

4 A. (BY JUROR NO. 62, MS. PATRICIA ANN WOODS) Yes,
5 sir. My husband was murdered in 2000.

6 Q. Okay, where did that occur, Ms. Woods? Here?

7 A. Grenada.

8 Q. Grenada. Would that affect you at all in this case
9 and keep you from being fair and impartial?

10 A. Yes, it would.

11 Q. Thank you, ma'am.

12 Number 54.

13 A. (BY JUROR NO. 54, VICKIE D. CURRY) My brother was
14 shot and killed in '92. In Madison County.

15 Q. In where, Ms. Curry?

16 A. Madison County.

17 Q. Madison County?

18 A. Madison.

19 Q. Okay. Ms. Curry, would that fact affect you in
20 this case and keep you from being fair and impartial?

21 A. No, sir.

22 Q. Thank you.

23 Number 76.

24 BY MR. EVANS: What was the number before that
25 one?

26 BY THE COURT: Ms. Woods, number 62.

27 Q. Let's go back. 66. Mr. Harvey.

28 A. (BY JUROR NO. 66, MR. ALVIN HARVEY) I had a nephew
29 get killed last year by law enforcement and--

Voir Dire by the Court

1 Q. Was that here?

2 A. Yeah.

3 Q. Okay. Would that fact affect you in this case and
4 keep you from being fair and impartial?

5 A. I imagine it would.

6 Q. Okay, all right.

7 Number 76. Ms. Austin.

8 A. (BY JUROR NO. 76, MS. ANNE ELIZABETH AUSTIN) My
9 mother was killed by a drunk driver.

10 Q. Ms. Austin, would that affect you at all in this
11 case and keep you from being fair and impartial?

12 A. No.

13 Q. Thank you. 105?

14 A. (BY JUROR NO. 105, MS. LEANNE HOPKINS) Yes. I
15 have a cousin in Memphis accused of attempted murder.

16 Q. Would that fact affect you in this case and keep
17 you from being fair and impartial?

18 A. Yes.

19 Q. Okay. Number 20?

20 A. (BY JUROR NO. 20, MR. GLOSSIE MAGEE, JR.) Yes,
21 sir. I had a brother was accused of murdering about 15 or 16
22 years ago over in Itta Bena. They said he took the lady down
23 and filled her full of shot, but he was not found guilty.

24 Q. Would that affect you at all, Mr. Magee?

25 A. I think so.

26 Q. Okay, thank you.

27 Yes, sir. Number 10.

28 A. (BY JUROR NO. 10, MR. JAMES THOMAS MOORE) I have
29 two brothers incarcerated, one for murder in 1990 and another

Voir Dire by the Court
for aggravated assault.

Q. Okay, Mr. Moore, I believe you have already told me you have got some kin folks going to be witnesses in this case, so thank you.

Okay, anybody else? Okay.

How many of you - and I don't want to know the facts about all this if it applies to you, but how many of you have ever been charged with a felony?

Okay, also in relation to the next part of that question, those of you who have already answered that you are related to Mr. Flowers don't need to answer it in that context. I will be talking about somebody other than him, but how many of you have a relative who has been charged with a felony? Okay, yes. If you would stand up, please.

A. (BY JUROR NO. 63, MS. CHINCHONA PERFEIT EDEN) I have a brother being charged.

Q. What is your number?

A. 63.

Q. Ms. Eden, where is that, has that occurred? Here?

A. Yes, it is.

Q. Okay, is that matter pending right now?

A. No, he has already been prosecuted.

Q. Okay, would that fact affect you at all in this case and keep you from being fair and impartial?

A. No.

Q. Okay. Number 90, if you would stand up, please.
Mr. Minnieweather.

A. (BY JUROR NO. 90, MR. BYRON ALLEN MINNIEWEATHER)
Yes, sir. My father.

Voir Dire by the Court

1 Q. Okay, Mr. Minniweather, would that fact affect you
2 at all in this case and keep you from being fair and
3 impartial?

4 A. No, sir.

5 Q. Okay, that occurred here, did it not?

6 A. Yes, sir.

7 Q. Okay. Number 57.

8 A. (BY JUROR NO. 57, MR. JOHN E. CLAY) I have a
9 brother been convicted of a felony.

10 Q. Mr. Clay, would that fact affect you at all in this
11 case?

12 A. No, sir.

13 Q. Did that occur here?

14 A. Yes, sir.

15 Q. How long ago?

16 A. It has been a few years ago.

17 Q. It is over with; is that right?

18 A. Yes.

19 Q. Okay, thank you. Number 41, Ms. Bane?

20 A. (BY JUROR NO. 41, MS. LISA RODGERS BANE) I have a
21 nephew, and I think he was charged with robbery.

22 Q. Was that here?

23 A. No, sir. It was in Tupelo several years ago.

24 Q. Would that fact affect you at all in this matter?

25 A. No, sir.

26 Q. Okay. Number 21.

27 A. (BY JUROR NO. 21, MS. BERNITA VANESSA KNIGHT) I
28 have a brother that was accused of a felony.

29 Q. Okay, would that fact affect you?

Voir Dire by the Court

1 A. No.

2 Q. Okay. Number 105, and that's Ms. Hopkins.

3 A. (BY JUROR NO. 105, MS. LEANNE HOPKINS) I have a
4 couple of cousins in different states.

5 Q. Would that affect you at all in this case?

6 A. No.

7 Q. Okay. Thank you.

8 Yes, ma'am. Number 101.

9 A. (BY JUROR NO. 101, MS. NYKEEM DAWN FORD) An uncle
10 in Utah, and no.

11 Q. I can't hear you, ma'am.

12 A. An uncle in Utah, and no.

13 Q. Okay. It would not affect you?

14 A. No.

15 Q. Okay. Anybody else?

16 The victims in this case are Bertha Tardy, Carmen
17 Rigby, Robert Golden, and Derrick Stewart. Are any of you
18 related by blood or marriage to any of those people?
19 Okay, Ms. Vance, yes, ma'am. You have already told me that.
20 Anybody else related to them? Number 22.

21 A. (BY JUROR NO. 22, MS. CAROL L. DICKEY) I was
22 related to Carmen. I am no longer married to the cousin.

23 Q. Okay. Ms. Dickey, would that fact affect you at
24 all in this case and keep you from being fair and impartial?

25 A. Probably.

26 Q. Thank you.

27 BY MR. CARTER: What was the answer? I didn't
28 hear her.

29 BY THE COURT: She said probably.

Voir Dire by the Court

1 Q. Okay, anybody else? How many of you knew them?

2 (Many hands go up.) Okay. I'm going to save a follow-up on
3 that question until later. Let me go back too. I asked who
4 all was related to Mr. Flowers. I don't think I asked the
5 question of how many of you knew Mr. Flowers? How many is
6 that? Other than the ones related. (Many hands go up.)
7 Okay, we will save that question for later too.

8 At the end of the trial, I'm going to give you
9 instructions on the law. I get to decide the law in this
10 case just like you get to decide the facts. You must accept
11 my instructions on the law as being the law of the case, and
12 you must do that whether you agree with it or not. It's just
13 the way it works. I get to say what the law is, and I give
14 you that in written instructions, and you are to apply that
15 law to the facts as you see them and come up with a decision.
16 Is there anybody here though that will not follow my
17 instructions on the law if they disagree with them?
18 Yes, ma'am. Number 72.

19 A. (BY JUROR NO. 72, MS. DEBBIE MURPHY COLLINS) This
20 is a capital case?

21 Q. Yes, ma'am.

22 A. I would never give a death verdict.

23 Q. Okay. I'm going to get a little bit more specific
24 with that with the next question. But other than any
25 instruction I give you about that, would you follow my
26 instructions on the law?

27 A. Yes, sir.

28 Q. Okay. Okay, and that is the next question. This
29 case could be a two phased trial. The reason for that is

Voir Dire by the Court

1 that the Defendant is indicted for capital murder. The jury
2 must first hear the evidence, get my instructions on the law,
3 consult with each other, and make a determination as to the
4 guilt or innocence of Mr. Flowers. If and only if the jury
5 finds him guilty at that stage of the trial will the trial go
6 any further. If it goes further, there will be a second
7 stage to the trial, and in this case the jury gets to
8 determine the punishment. In most cases I get to determine
9 it. But in a capital case the jury determines what happens.
10 At that stage probably what will happen is that the State
11 will adopt the testimony you have already heard so we don't
12 go through that, and then he may not; the State may decide
13 not to do that. But I anticipate that he will just adopt
14 that, and you can consider all the evidence that you have
15 heard.

16 Then the State may have further evidence to put on
17 in relation to what are aggravating circumstances that would
18 be in support of the death penalty, and at that time the
19 Defendant would have to put on evidence, or wouldn't have to
20 put on any evidence at all, but he could put on evidence and
21 probably will put on evidence of mitigating circumstances
22 that would weigh against the death penalty.

23 I would give written instructions on how you are to
24 consider these things, and you would take those to the jury
25 room, and then the jury would determine what the punishment
26 was in that particular case, although there is a provision in
27 there that if they cannot agree, then it would fall back to
28 me. But the options are going to be the death penalty or
29 life without parole, and if you can't determine that, then it

Voir Dire by the Court

comes back to me for, to impose sentence on the thing.

But I am limited, of course, about what I can do too, but the death penalty has nothing to do with me. That is the jury function.

Okay, is there anybody, if we get to that point, is there anybody on the panel who has a religious or philosophical beliefs or scruples that would prohibit you from imposing the death penalty if I gave you an instruction on the law and said that it was allowed in this case, and you found from the testimony in this case that the evidence warranted it? Is there anybody that couldn't do it if the law said you could and the facts warranted it?

Okay. Okay, number 18, Ms. Vance. Ms. Vance, you already told me you could not be fair and impartial anyhow; is that right?

A. (BY JUROR NO. 18, MS. ALICE FAYE VANCE) Yes.

Q. And I believe number 1, Ms. Lockhart, you have told me the same thing; is that right? That you could not be fair and impartial?

A. (BY JUROR NO. 1, MS. SANDRA ANN LOCKHART) I am his cousin.

Q. I can't hear you.

A. I am his cousin.

Q. Okay. You cannot be fair and impartial; right?

A. No.

Q. Okay. Yes, ma'am. Would you stand up. You, ma'am. I need to see your number. Were you holding it up?

A. (BY JUROR NO. 14, MS. STEPHANIE FORREST) I already.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 122-271

VOLUME 9 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Betty W. Sephton, Clerk

.....
TRIAL COURT # : 2003-0071-CR

DISK
CLOSED

5 of 3

Voir Dire by the Court

1 Q. Huh?

APR 14 2004

2 A. Go ahead.

JULIE H. HALFACRE, CIRCUIT CLERK

3 Q. Were you holding it up?

BY _____ D.C.

4 A. Yes.

5 Q. Okay, and Ms. Forrest, I believe you have also
6 previously stated you could not be fair and impartial because
7 you were related to him; is that right?

8 A. Yes.

9 Q. Okay, number 39, Mr. Kelly?

10 A. (BY JUROR NO. 39, MR. PAUL W. KELLY) I just don't
11 believe it's up to me to decide whether or not a man should
12 live or die.

13 Q. Okay, so your personal belief is that even if I
14 instructed you that the law allowed it and after you heard
15 all the facts, you determined that the facts warranted it,
16 you still couldn't do it? Is that correct?

17 A. I don't think I could, sir.

18 Q. Okay, thank you, Mr. Kelly.

19 Number 51. (To other jurors close to the front) I
20 will come back to y'all in a minute. I'm sorry; I missed
21 you. Mr. Davis.

22 A. (BY JUROR NO. 51, MR. JEFFREY EUGENE DAVIS) It's
23 against my religion.

24 Q. Okay, Mr. Davis, I have to specifically ask you the
25 question if you don't mind. Are you telling me that if you
26 found, if I instructed you that the law allowed it and you
27 found from the facts that the evidence warranted it, you
28 still could not do it? Is that correct?

29 A. I'm sorry, Judge. I just can't do it.

Voir Dire by the Court

1 Q. Okay, I thank you, Mr. Davis.

2 Let's go on the first row here. Number 3. Ms.

3 Butts?

4 A. (BY JUROR NO. 3, MS. LUCY MAE CLARK ESKRIDGE. I'm
5 Eskridge. I don't think I could do it.

6 Q. Okay. Let me ask you specifically. I hate to take
7 this time, but I have to ask you specifically. If I instruct
8 you that the law allowed it and you found that the evidence
9 warranted it, are you telling me that you still could not do
10 that?

11 A. No, sir.

12 Q. Thank you, Ms. Butts.

13 A. Eskridge.

14 Q. Eskridge?

15 BY MR. EVANS: Eskridge.

16 BY THE COURT:

17 Q. Okay. They have got it Butts on here. I
18 apologize. Felicia-- wait a minute. Have we got y'all mixed
19 up? Okay, this is Lucy Mae Clark Eskridge. Ms. Butts, you
20 are-- let's see. Ms. Eskridge is number 3. Well, I'm the
21 one reading it wrong. I'm sorry. I have got bad eyes. I
22 apologize.

23 Okay, number 4, Ms. Farmer. If I told you the law
24 allowed it and you found that the facts warranted it, could
25 you impose the death penalty?

26 A. (BY JUROR NO. 4, MS. ELLA B. FARMER) No.

27 Q. Okay, number 40. Ms. Golden.

28 A. (BY JUROR NO. 40, MS. SHARON GOLDEN) It's against
29 my religion beliefs.

Voir Dire by the Court

1 Q. Ms. Golden, are you kin to Robert Golden?

2 A. No.

3 Q. Okay. If I instructed you that the law allowed it
4 and you found that the facts warranted it, could you impose
5 the death penalty?

6 A. No.

7 Q. 42, Ms. Hugger.

8 A. (BY JUROR NO. 42, MS. TASHA BENITA HUGGER) (Ms.
9 Hugger shakes her head.) I couldn't do it.

10 Q. You could not? If I instructed you that the law
11 allowed it and you found that the facts warranted, could you
12 impose the death penalty?

13 A. No.

14 Q. Let's see, 64. Ms. Rawls.

15 A. (BY JUROR NO. 64, MS. TERESA RUSSELL RAWLS)
16 Because of my religion beliefs.

17 Q. Ms. Rawls, if I instructed you the law allowed it
18 and you found that the facts warranted it, could you impose
19 the death penalty?

20 A. No, sir.

21 Q. Number 66, Mr. Harvey. I believe, Mr. Harvey, you
22 have already told me that you couldn't be fair and impartial.

23 Number 67, Mr. -- is it Miers?

24 A. (BY JUROR NO. 67, MR. JAMES EVERETT MIERS) Yes,
25 sir.

26 Q. Mr. Miers, if I instructed you that the law
27 authorized it and you found that the facts warranted it,
28 could you impose the death penalty?

29 A. No, sir.

Voir Dire by the Court

1 Q. Okay. Number 68, Ms. Young.

2 A. (BY JUROR NO. 68, MS. VELMA R. YOUNG) I couldn't.

3 Q. If I instructed you that the law allowed it and you
4 found that the facts warranted it, could you impose the death
5 penalty?

6 A. No, I couldn't.

7 Q. Number 80, Mr. Moore. I believe you have already
8 told me you couldn't be fair and impartial. You were related
9 to Mr. Flowers; is that right?

10 A. (BY JUROR NO. 80, MR. LEONARD MOORE) Yes.

11 Q. Okay. Number 81?

12 A. (BY JUROR NO. 81, MR. SANDY NEWMAN, JR.) No. I
13 couldn't do it, sir.

14 Q. Okay, Mr. Newman, if I instructed you that the law
15 allowed it and you found that the facts warranted it, could
16 you do it?

17 A. No.

18 Q. Okay. Number 94, Ms. Weems. If I instructed you,
19 Ms. Weems, that the law allowed it and you found that the
20 facts warranted it, could you impose the death penalty?

21 A. (BY JUROR NO. 94, MS. LINDA FAYE WEEMS) No.

22 Q. Okay, number 9, Mr. Woods. If I instructed you
23 that the law allowed it and you found that the facts
24 warranted it, could you impose the death penalty?

25 A. (BY JUROR NO. 9, MR. GEORGE WILLIE WOODS) I
26 couldn't do it.

27 Q. Okay. Number 20, Mr. Magee, I believe you have
28 already told me you could not be fair and impartial because
29 of other matters; is that right?

Voir Dire by the Court

1 A. (BY JUROR NO. 20, MR. GLOSSIE MAGEE, JR.) Yes.

2 Q. Number 22, Ms. Dickey, I believe the same thing
3 because of your relationship with the Rigby's.

4 A. (BY JUROR NO. 22, MS. CAROL L. DICKY) I am, I am
5 also his mother's boss. I mean I was her supervisor.

6 Q. Because of your relationships, you don't feel you
7 could be fair and impartial?

8 A. It would go both ways. I couldn't be.

9 Q. Okay. Number 37, Ms. Trotter, I believe you are
10 related to Mr. Flowers. You have already told me you
11 couldn't be fair and impartial.

12 Number 57, Mr. Clay.

13 A. (BY JUROR NO. 57, MR. JOHN E. CLAY) No, I couldn't
14 impose that.

15 Q. Mr. Clay, if I instructed you that the law allowed
16 it and you found that the facts warranted it, could you
17 impose the death penalty?

18 A. No, sir.

19 Q. Thank you.

20 60, Ms. Miers.

21 A. (BY JUROR NO. 60, MS. FLORENCE CARR MIERS) Yes.

22 Q. Ms. Miers, if I instructed you that the law allowed
23 it and you found that the facts warranted it, could you
24 impose the death penalty?

25 A. No.

26 Q. Okay. And number 61, Ms. Holifield. If I
27 instructed you that the law allowed it and you found that the
28 facts warranted it, could you impose the death penalty?

29 A. (BY JUROR NO. 61, MS. ELSIE REBECCA HOLIFIELD) No.

Voir Dire by the Court

1 Q. Number 45. Ms. Bond, if I instructed you that the
2 law allowed it and you found that the facts warranted it,
3 could you impose the death penalty?

4 A. (BY JUROR NO. 45, MS. JULIA ANN BOND) No, I could
5 not.

6 Q. Okay, 70. Mr. Bays.

7 A. (BY JUROR NO. 70, MR. IRVIE LEE BAYS) Yes.

8 Q. If I instructed you that the law allowed it and you
9 found that the facts warranted it, could you impose the death
10 penalty?

11 A. No.

12 Q. Number 72. Ms. Collins, if I instructed you that
13 the law allowed it and you found that the facts warranted it,
14 could you impose the death penalty?

15 A. (BY JUROR NO. 72, MS. DEBBIE MURPHY COLLINS) No,
16 sir. I couldn't.

17 Q. 84. Mr. Abel. If I instructed you that the law
18 allowed it and you found that the facts warranted it, could
19 you impose the death penalty?

20 A. (BY JUROR NO. 84, MR. MARVIN ABEL) No, I could
21 not.

22 Q. 95, Ms. Bibbs. If I instructed you that the law
23 allowed it and you found that the facts warranted it, could
24 you impose the death penalty?

25 A. (BY JUROR NO. 95, MS. MARY V. BIBBS) No, I
26 couldn't.

27 Q. Okay. And number 100, Ms. Knox-Russell. If I
28 instructed you that the law allowed it and you found that the
29 facts warranted it, could you impose the death penalty?

Voir Dire by the Court

1 A. (BY JUROR NO. 100, MS. MICHELLE A. KNOX-RUSSELL) I
2 could not.

3 Q. All right, did I -- okay. Number 2, Ms. Butts. I
4 got it right this time. Ms. Butts, if I instructed you that
5 the law allowed it and you found that the facts warranted it,
6 could you impose the death penalty?

7 A. (BY JUROR NO. 2, MS. FELICIA ANN BUTTS) No, I
8 couldn't.

9 Q. All right, sir. Yes, sir, and number 13, Mr.
10 Elliott. If I instructed you that the law allowed it and you
11 found that the facts warranted it, could you vote for the
12 death penalty?

13 A. (BY JUROR NO. 13, MR. WILLIE FLOYD ELLIOTT) No, I
14 couldn't.

15 Q. And number 25, Mr. Hamer?

16 A. (BY JUROR NO. 25, MR. WILLIE LEE HAMER, JR.) I
17 couldn't.

18 Q. Mr. Hamer, if I instructed you that the law allowed
19 it and you found that the facts warranted it, could you
20 impose the death penalty?

21 A. (Mr. Hamer shakes his head.)

22 Q. Okay, thank you. Anybody else?

23 Okay, is there anybody on the panel that if we got to that
24 stage would vote for the death penalty regardless of what the
25 facts and the law? Of course, if we got to that point, I
26 would have instructed you on the law, that the law allowed
27 it, but would anybody just because Mr. Flowers would have
28 already been found guilty just automatically vote for the
29 death penalty regardless of what the mitigating and

Voir Dire by the Court

1 aggravating circumstances were and what my instructions were?

2 Would anybody do that? (A hand goes up.) You would, sir?

3 A. (BY JUROR NO. 99, MR. MARK WILBURN SYKES) Yes,
4 sir. My mind is made up.

5 Q. All right. Mr. Sykes, thank you, sir. 99, Mr.
6 Sykes. And number 82, Mr. Henry.

7 A. (BY JUROR NO. 82, MR. LARRY GENE HENRY) Yes, sir.

8 Q. Okay. Anybody else?

9 All right, number 75. Now y'all are telling me when you
10 answer this, regardless of what I tell you the law is or
11 regardless of what the facts are, that if you have gotten to
12 the guilty part, you would vote for the death penalty
13 regardless of whatever the rest of the evidence was? Is that
14 right?

15 A. (BY JUROR NO. 75, MR. JUSTIN SMITH RABON) Yes,
16 sir.

17 Q. What is your name, sir? I mean number, sir?

18 A. Number 75.

19 Q. 75, Mr. Rabon?

20 A. Yes.

21 Q. Okay. And number 89, Mr. Dismuke. That's what you
22 are telling me, Mr. Dismuke?

23 A. (BY JUROR NO. 89, MR. BARRY DISMUKE) Yes, sir.

24 Q. Sir?

25 A. Yes, sir.

26 Q. Okay. Did I miss anybody? Okay.

27 Now this next question is going to be similar, but
28 it does not involve the death penalty. Just forget we are
29 talking about the death penalty right now. Is there anybody

Voir Dire by the Court

1 on this panel who just could not sit in judgment of their
2 fellow man because of some religious or philosophical belief?
3 In other words, couldn't make a decision even on the first
4 stage of the trial because of their personal belief or their
5 religious belief or whatever belief they have got prohibits
6 them from passing judgment on their fellow man? Okay, and
7 that is-- let me see who we have got here. (Juror number 67
8 raised his hand.) Okay, other than -- okay, let's see. That
9 is Mr. Miers, 67. He pretty well already said that, and so
10 has Ms. Rawls. Number 81 is Mr. Newman.

11 I am really not talking about the death penalty.
12 Well, no, let me take that back. You couldn't do it whether
13 we are trying a burglary case; is that right?

14 A. (BY JUROR NO. 81, MR. SANDY NEWMAN, JR.) No.

15 Q. Okay, all right. Number 94, Ms. Weems, you have
16 said you couldn't.

17 How many of those other than who have answered it
18 that they couldn't impose the death penalty could not pass
19 judgment on their fellow man? All right, Mr. Clay, I believe
20 you have already answered that question.

21 So have you, ma'am, I think, back at the back.
22 Your number back there at the back? What is your number,
23 ma'am?

24 A. (BY JUROR NO. 95, MS. MARY V. BIBBS) 95.

25 Q. That is Ms. Bibbs. She has already answered the
26 questions.

27 And 104. I believe Mr. Loggins has already
28 answered the question. Okay.

29 I think the simplest way to ask this next question

Voir Dire by the Court

1 is this way. Well, the indictment, which I have already told
2 you is no evidence of the Defendant's guilt, alleges that on
3 July the 16th, 1996, in Winona, and the indictment doesn't
4 say, but it was at the Tardy Furniture Company, that
5 Mr. Flowers killed and murdered Bertha Tardy, Carmen Rigby,
6 Robert Golden, and Derrick Stewart. How many of you have
7 never heard of this case? (One hand goes up.) Okay, and
8 let's see. What is your number, ma'am? Number 31.

9 Anybody else? (No further response.)

10 **BY THE COURT:** Ladies and gentlemen, at this
11 particular time I'm going to give y'all a break.
12 There are going to be some matters I have to tend to
13 inside the courtroom, and I can't have you present
14 when I do that. I'm going to ask you if you will to
15 step out. The bailiffs will come get you when we are
16 ready for you to come back in.

17 (THE JURORS ALL LEFT THE COURTROOM, AND THE COURT
18 MET WITH ALL COUNSEL FOR THE FOLLOWING:)

19 **BY THE COURT:** Okay, we have got after that
20 stage, we have got some of them that are obvious for
21 cause, at least in the Court's opinion. We have got
22 some that are probably going to be obvious for cause
23 on the death qualification, but y'all have the right
24 to come back and rehabilitate them and see where we
25 are. So we're not going to, I'm not going to do them
26 now, but I want to get through, let's get down to the
27 ones we know we are going to get rid of for cause at
28 this time.

29 All right, I show - and these are mostly folks

Jurors excused for cause - JURY OUT

1 that are related and said they could not be fair and
2 impartial.

3 Number 1, Ms. Lockhart. I'm going to call these
4 off now. If y'all have an objection to it, you let me
5 know. Okay? All right, number 1, Ms. Lockhart.

6 **BY MR. CARTER:** You are excusing these; right?

7 **BY THE COURT:** Yeah, for cause because they said
8 they could not be fair and impartial. Number 5, Mr.
9 Rogers. He was, he knew the Rigbys. Number 6, Ms.
10 Bell, she could not be fair and impartial because of
11 people in her family have been murdered. James Moore,
12 number 10, has got witnesses in this case. He also
13 said he couldn't be fair and impartial. Number 12,
14 Mr. Robinson, couldn't be fair and impartial. Number
15 14, Ms. Forrest, couldn't be fair and impartial.
16 Ms. Vance.

17 **BY MR. CARTER:** What number?

18 **BY THE COURT:** 18. Number 20, Mr. Magee. And
19 unless I say different, they have said that they
20 couldn't be fair and impartial. If y'all want me to
21 make a particular record on that, let me know. I will
22 do that. But if I don't say anything, it will be
23 because they are related to him or for some reason
24 have said they couldn't be fair and impartial.

25 Number 21, Ms. Knighton; number 22, Ms. Dickey;
26 number 25, Mr. Hamer; number 33, Ms. Baskin; number
27 37, Ms. Trotter. I believe we are going to let Wiley
28 Charles go, number 38.

29 **BY MS. FERRARO:** He said he could be fair.

Jurors excused for cause - JURY OUT

1 **BY THE COURT:** No, he said we might have him
2 confused.

3 **BY MR. EVANS:** I probably did.

4 **BY MR. DE GRUY:** Before we get too much further,
5 on number 25, I have an answer on the death penalty
6 question. I don't have an answer for him as related.

7 **BY MS. FERRARO:** That's what I had too.

8 **BY THE COURT:** Okay, well, I will leave 25 on
9 then. We show that he was opposed to the death
10 penalty; is that right?

11 **BY MR. DE GRUY:** I do have that.

12 **BY THE COURT:** I may have marked it wrong on
13 mine. So he, we will show him still--

14 **BY MR. CARTER:** -- He said he couldn't vote for
15 the death penalty.

16 **BY THE COURT:** Okay. Let's see where that leaves
17 me. Back over to about 43, Ms. Forrest; 44, Mr.
18 Yates; 59, Mr. Campbell.

19 **BY MR. CARTER:** I thought number 59 -- I thought
20 he said he could be fair. Did I write it wrong?

21 **BY THE COURT:** Yeah, because he didn't. He said
22 he could not be fair.

23 **BY MR. CARTER:** I thought he said could. Maybe I
24 misunderstood.

25 **BY MR. EVANS:** He said he couldn't.

26 **BY THE COURT:** Number 62, Ms. Woods. Now I will
27 say this. Unless he changes his mind, if you want to
28 keep 59 to where y'all can bring him in and ask him
29 that question specifically, we will do that.

Jurors excused for cause - JURY OUT

1 BY MR. CARTER: Yeah.

2 BY THE COURT: But I am confident that he said
3 that.

4 BY MR. CARTER: I would just like to be sure,
5 Your Honor, if you don't mind. I probably heard
6 wrong, but I'm not sure.

7 BY THE COURT: I have got some idea that Mr.
8 Campbell has got some connection with this case.

9 BY MR. EVANS: He does.

10 BY THE COURT: That's what I thought. That name
11 is familiar. Number 65, Taketa Jones; number 66,
12 Alvin Harvey; 69, Daryl Baskin; number 78, Ray
13 Richardson; number 80, Leonard Moore; 82, Larry Henry.
14 Well, I take that back. That is reverse Witherspoon.
15 He has got to stay on for further voir dire.

16 BY MS. FERRARO: And 82.

17 BY THE COURT: 82 is the one I was talking about.
18 Okay. You have got 89 is the other one.

19 BY MS. FERRARO: Okay.

20 BY THE COURT: Well, there is several more.
21 Anyhow, 89 stays on for the same reason. 98 is for
22 cause. 99 is reverse Witherspoon. 104 and 105.

23 Are there any objections to those strikes for
24 cause by the Court?

25 BY MS. FERRARO: 104 was the last one?

26 BY THE COURT: 105 too.

27 BY MR. EVANS: None for the State.

28 BY MR. DE GRUY: None from the Defense, Your
29 Honor.

Jurors excused for cause - JURY OUT

1 **BY THE COURT:** Okay. Why don't we just then
2 start with individual voir dire on the thing? I think
3 we can expand it a little bit more than what we talked
4 about. I'm going to talk to them about the -- I'm
5 going to talk to them about what they know about the
6 case. I'm going to talk to them about their
7 relationship to the victims and then whether their
8 acquaintanceship with Mr. Flowers. Then I will quit,
9 and I will put it to y'all to do it. While we have
10 got them on there, let's go through the death
11 qualification and the reverse Witherspoon, and then
12 y'all can question them as to those things too.

13 The fact is the way we are going to do it, I
14 might as well just let you just voir dire them. You
15 know, sometimes I limit it and we go back and then we
16 do it with the panel as a whole but -- and we will do
17 that later if it is necessary, but I think I may just
18 let y'all go ahead as to relevant stuff now.

19 All right, y'all ready? Or you want a break?
20 It's ten to 12:00, isn't it?

21 **BY MR. DE GRUY:** Yes, sir.

22 **BY MR. EVANS:** We won't get very far a few
23 minutes till 12:00.

24 **BY THE COURT:** Okay. Okay, the Sheriff needs a
25 list, a jury list. I'm going to give you some names,
26 and I'm going to circle them on this thing. They have
27 been excused for cause. I want you to go out there
28 and get them, or Mary Lee, you can, whoever. Get them
29 and you take them to the back before I bring the jury

Jurors excused for cause - JURY OUT

1 back in here, and tell them that they are excused and
2 they can leave. Okay? If you will let me have the
3 list, I will mark who has got to go. And I'm going to
4 go over it with y'all to make sure I'm doing it right.

5 (Pause while the Court is marking the list.)

6 **BY THE COURT:** While we are at it too, we will
7 voir dire the lady that didn't hear anything about
8 this case too. We will individual her.

9 **BY MR. EVANS:** Find out where she is from.

10 **BY THE COURT:** And see what the deal is. (Pause)
11 Y'all look at y'all's list. This is who I'm going to
12 send them out to let go home. Number 1, number 5,
13 number 6, number 10, number 12, number 14, number 18,
14 number 20, number 21, number 22, number 33, number 37,
15 number 38, number 43, number 44, number 62, number 65,
16 number 66, number 69, number 78, number 80, number 98,
17 number 104, and number 105.

18 **BY MR. HILL:** Did you call out 59?

19 **BY THE COURT:** No, because we are going to bring
20 him in for the purpose of determining that's what he
21 said.

22 **BY MR. HILL:** Whether or not, yeah, okay.

23 **BY THE COURT:** Okay. Here is the list of the
24 ones that you need to release, and I don't want
25 anybody else to know what you are doing. Just get
26 them and take them back here and get them back to the
27 back. And then when they all leave and take them to
28 the back, and Holly will bring the rest of the jurors
29 in here, and I will let them go to lunch. And you can

Jurors excused for cause - JURY OUT

1 let those folks go tell them they are gone.

2 **BY BAILIFF BROWNING:** But I can go out there and
3 call their names?

4 **BY THE COURT:** Oh, yeah. You can do that.

5 **BY BAILIFF BROWNING:** Just have them come go with
6 me and take them to the back.

7 **BY THE COURT:** Yeah, they will think I have some
8 sinister plan for them. They will think they got
9 selected.

10 (The Bailiff leaves the courtroom.)

11 **BY MR. CARTER:** So Your Honor, we are talking
12 about going to individual voir dire at this point?

13 **BY THE COURT:** I'm not limiting y'all about what
14 you can do. I'm just going to, I think when we go to
15 this point, we are going to get to the point -- when
16 we do this, we are getting ready to eliminate a bunch
17 more for cause. Then we will get down to where we can
18 put some folks out there, and y'all can go at it.
19 Whatever we don't ask in here -- but I really don't
20 care right now on the individual, if you want to go
21 ahead and do a full voir dire on them individually.
22 It is going to take about the same amount of time, I
23 think.

24 Although I think once I ask them a question that,
25 have you made up your mind about this case, and they
26 say yes, I don't think there is going to be much
27 point. When we send them out, then we will make a
28 determination on those. So I mean well, we may not
29 have to send them out. I will put it this way. When

Jury panel sent to lunch

1 I ask them the question if that's what they say, then
2 I will ask you if y'all have any questions. Y'all can
3 make it long or short, whatever.

4 I need for Mary Lee to report back to me that she
5 has gotten those folks separated out.

6 (Pause while waiting on the Bailiff to take some of
7 the jurors to the back of the courthouse. Some of the jurors
8 entered the courtroom during this time.)

9 **BY THE COURT:** I'm going to let y'all get a
10 little lunch in just a minute, but I have got
11 something I have got to do first. (To the Sheriff)
12 Has she got it?

13 (Bailiff Browning enters the courtroom.)

14 **BY BAILIFF BROWNING:** Yes, sir. All of those
15 have been told that they can leave. Now I don't know
16 if any of them is going to stay as spectators or not;
17 I don't know.

18 **BY THE COURT:** Okay, well--

19 **BY BAILIFF BROWNING:** They have been told.

20 **BY THE COURT:** Okay, that is fine. (To the
21 jurors) We are going to take a lunch break. It is 12
22 o'clock. We will start right around 1 o'clock or try
23 to, as close to 1 o'clock as we can, so if you would
24 be back by 1 o'clock. You can go eat wherever you
25 want to. You are not to discuss this case with
26 anybody or to allow anybody to discuss it with you or
27 to allow anybody to discuss it in your presence. If
28 any time during this trial, the lawyers pass you by
29 and they don't even acknowledge you are there, it's

Jury panel sent to lunch

1 because I have told them that's what they can do.
2 That is the same way with law enforcement or anybody
3 else. You are just not to -- I mean you don't know
4 anything about this case from what, the evidence. You
5 haven't heard any of it. So you are not to make up
6 your mind about anything or discuss this with anybody
7 or have it discussed in your presence. So I will see
8 you back at 1 o'clock.

9 JURY PANEL LEAVES THE COURTROOM FOR THE NOON RECESS
10 ON FEBRUARY 2, 2004.

11 **BY MR. CARTER:** I have a question, Your Honor.
12 Your Honor, let me make sure I understand what you say
13 we are going to do now. Are we going to get a chance
14 to talk to the entire panel, each side if we want to?

15 **BY THE COURT:** Sure.

16 **BY MR. CARTER:** Oh, okay.

17 **BY THE COURT:** You are not going to get to talk
18 to them twice though. In other words, you can't ask
19 the same questions over and over and over. You are
20 going to have them on individual. I'm pretty much
21 going to let you ask -- I generally limit that, but
22 I'm going to pretty much let you go on into it because
23 of the nature of the questions that I'm going to ask,
24 and we have got to ask, and since we have got to talk
25 to, I mean it's the whole panel is going to be
26 individual voir dired. And that is 53 at my count
27 that will be individual -- well, no, it's going to be
28 more than that.

29 And then after that, if there are any general

Qualification of more jurors

1 questions you want to put to the panel, we will talk
2 about it at that time. But we are not going to go
3 back over the same ground. So I'm going to give you
4 the opportunity at individual to do it, and that is
5 probably your best chance to get the information you
6 want. But I'm going to listen to anything you have
7 got to say. So if that don't suit, bring it up, and
8 we will talk about it. Okay? All right.

9 Where are the jurors that showed up? Y'all raise
10 your right hand.

11 **BY THE CLERK:** They have had the first oath.

12 (Three more jurors were attempted to be qualified
13 as follows:)

14 **BY THE COURT:** Okay. To serve on a jury in this
15 state, you must be 21 years of age. You must be able
16 to read and write. You must not have been convicted
17 of a felony. You must be a registered voter in
18 Montgomery County. You must not have been convicted
19 of the unlawful sale of intoxicating liquors within
20 the last five years. You cannot be a common gambler
21 nor habitual drunkard. You must not have a case
22 pending in this court, and you must not have served on
23 a jury in this county within the last two years. Does
24 that apply to any of you?

25 **BY A JUROR:** Yes, sir. I am 20.

26 **BY THE COURT:** You are 20? Your name, sir?

27 **BY A JUROR:** Michael Glenn Taylor.

28 **BY THE COURT:** Okay, Mr. Taylor, you are going to
29 be excused. Yes, ma'am.

Qualification of more jurors

1 BY A JUROR: Well, I can't be on the trial. I
2 don't, you know --

3 BY THE COURT: --Well, we are not to that point.
4 Do you meet, any of those qualifications apply to you?

5 BY A JUROR: Explain to me.

6 BY THE COURT: Ma'am?

7 BY A JUROR: Explain to me.

8 BY THE COURT: Okay, well, you listen to me this
9 time; okay?

10 BY A JUROR: I am listening and I am getting
11 close.

12 BY THE COURT: Okay, you have got to be 21. Are
13 you over 65?

14 BY A JUROR: I am 63.

15 BY THE COURT: 63, okay. You have got to be 21;
16 you have got to be able to read and write. You cannot
17 have been convicted -- can you read and write?

18 BY A JUROR: No, sir.

19 BY THE COURT: Okay. What is your name?

20 BY A JUROR: Mattie Skinner.

21 BY THE COURT: All right, you are excused, ma'am.
22 How about you, ma'am?

23 BY A JUROR: I can't read. I am 58.

24 BY THE COURT: You are what?

25 BY A JUROR: 58.

26 BY THE COURT: Okay. Did you meet all those
27 qualifications I just did?

28 BY A JUROR: No.

29 BY THE COURT: Which ones did you not meet?

Qualification of more jurors

1 **BY A JUROR:** I said I can't not, you know, read.
2 I am 58. I can't read.

3 **BY THE COURT:** You can't read?

4 **BY A JUROR:** Yes.

5 **BY THE COURT:** You cannot read and write?

6 **BY A JUROR:** I can write.

7 **BY THE COURT:** Okay, but you can't read?

8 **BY A JUROR:** Right.

9 **BY THE COURT:** Okay. We sent these documents to
10 you. Did you read them?

11 **BY A JUROR:** (Juror shakes her head.)

12 **BY THE COURT:** Okay, what is your name?

13 **BY A JUROR:** Rosanna.

14 **BY THE COURT:** Okay, you are excused. Okay,
15 y'all go eat.

16 (Another juror approached the bench.)

17 **BY A JUROR:** I have kids to pick up at 2 o'clock.

18 **BY THE COURT:** What is your name?

19 **BY A JUROR:** Gail Lynn Townsend.

20 **BY THE COURT:** Ms. Townsend, there is not
21 anything I'm going to be -- you need to call somebody
22 and get somebody, make arrangements to pick them up.
23 There is not anything I can do about that. Okay.

24 (FOLLOWING THE NOON RECESS ON FEBRUARY 2, 2004,
25 PROCEEDINGS CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
26 JURY PANEL, AND THE DEFENDANT PRESENT:)

27 **BY MR. HILL:** May I approach, Your Honor?

28 **BY THE COURT:** Yes.

29 (CONFERENCE AT THE BENCH AS FOLLOWS:)

Preliminary Matters

1 **BY MR. HILL:** I have got a couple of members of
2 the victims' family that asked me if they would be
3 permitted to sit in here while the voir dire is going
4 on?

5 **BY THE COURT:** Yeah, sure. They can sit over
6 there.

7 **BY MR. HILL:** Yes, sir.

8 END BENCH CONFERENCE

9 **BY THE COURT:** Ladies and gentlemen, we are to
10 the point in this process where we are going to have
11 to ask some questions about what you know about this
12 case, and in order that your answers don't influence
13 other people on the panel, we are going to do that on
14 an individual basis, one on one. We are not picking
15 on anybody, but we are going to ask you to step
16 outside the courtroom. And then the bailiff will come
17 get you, and we will have some questions to ask you
18 individually about this matter. And we are going to
19 start that at this time, so I will ask, if you will,
20 to step out.

21 (WHILE THE JURY PANEL WAS LEAVING THE COURTROOM,
22 THERE WAS THE FOLLOWING:)

23 **BY THE COURT:** Let me see y'all up here.

24 (CONFERENCE AT THE BENCH AS FOLLOWS:)

25 **BY THE COURT:** We have got a juror, and we will
26 have to wait until Ms. Halfacre gets back in here. I
27 think her name is Townsend. She was on the panel, but
28 somehow or another, they left her off the list. But
29 she has been through all this. She took the oath, and

Preliminary matters

1 she has been through all the voir dire, but she is not
2 on the list. And we are going to add her at the
3 bottom, or we can -- have y'all got any objection to
4 her going at the bottom?

5 BY MR. EVANS: No.

6 BY MR. CARTER: It would probably be more
7 advantageous for everybody including the Court to be
8 at the top, wouldn't it?

9 BY THE COURT: No, I ain't going to put her at
10 the top. I'm either going to put her where she would
11 have been in the order, which is going to mess all my
12 numbers up, or I can put her at the end.

13 BY MR. EVANS: It will be a nightmare keeping up
14 with them if we insert her--

15 BY THE COURT: Well, I tell you what let's do.
16 Ms. Townsend, is that her name? The one that got
17 lost?

18 BY THE CLERK: Uh-hum.

19 BY THE COURT: Let me see what you have got.

20 BY THE CLERK: You want to know where she would
21 have been?

22 BY THE COURT: One, I want to know what her name
23 is.

24 BY THE CLERK: Gale, G-A-L-E, Lynn Townsend.

25 BY THE COURT: L-Y-N-N?

26 BY THE CLERK: Uh-hum.

27 BY THE COURT: All right, where would she have
28 been?

29 BY THE CLERK: She would have been right after

Preliminary matters

1 Judy Tompkins. She would have been 9.

2 BY THE COURT: She would have been 9?

3 BY THE CLERK: Uh-hum.

4 BY THE COURT: Well, okay. Judy Tompkins is 8.
5 Why don't I give her a number of 8A. That will put
6 her in her right position. Will that be okay?

7 BY MR. CARTER: We can live with that.

8 BY THE COURT: Okay, will you take care of that
9 while we are doing this other? Has she gotten the
10 oath?

11 BY THE CLERK: Uh-hum. She has gotten the first
12 oath. Do you want me to make a new list right quick
13 and insert 8A or you just want to go with this other
14 list?

15 BY THE COURT: We are going to write her in right
16 now, and then we are going to make another list.
17 Okay, yeah, you can go ahead and be fixing that to do,
18 but I don't need you to print it right yet. All
19 right, that is Gale -- we are going to need a new card
20 for her.

21 BY THE CLERK: Okay.

22 BY THE COURT: An 8A card. Now have we qualified
23 anybody else? We haven't yet. Just these two?

24 BY THE CLERK: Uh-hum.

25 BY THE COURT: Y'all raise your right hand.

26 BY THE CLERK: He has not been sworn.

27 BY THE COURT: Why don't you swear him in, and
28 let me do it all at once.

29 (Two prospective jurors were sworn to answer the

Preliminary matters

questions by the Clerk.)

1
2 **BY THE COURT:** Okay, to serve on a jury in this
3 state, you must meet certain qualifications. I'm
4 going to go over those with you. You tell me if they
5 apply to you. You have got to be 21. You have got to
6 be able to read and write. You cannot have been
7 convicted of a felony. You must be a registered voter
8 in Montgomery County. You cannot have been convicted
9 of the unlawful sale of intoxicating liquors within
10 the last five years. You cannot be a common gambler
11 nor habitual drunkard. You must not have served on a
12 jury in this county within the last two years, and you
13 must not have a case pending in this court, and this
14 is the State of Mississippi versus Curtis Flowers, and
15 that would be the only case pending at this time.
16 Does that apply to either one of you?

17 **BY A JUROR:** No.

18 **BY A JUROR:** No.

19 **BY THE COURT:** You are obviously neither one over
20 65, are you?

21 **BY A JUROR:** No.

22 **BY A JUROR:** No.

23 **BY THE COURT:** Do you have a medical reason that
24 you cannot serve?

25 **BY A JUROR:** No.

26 **BY A JUROR:** No.

27 **BY THE COURT:** Do either of you own your own
28 business where that business would shut down if you
29 were here?

Preliminary matters

1 BY A JUROR: No.

2 BY A JUROR: No.

3 BY THE COURT: Do either of you have any reason
4 that you cannot serve in this matter?

5 BY A JUROR: No.

6 BY A JUROR: No.

7 BY THE COURT: All right, I need -- what is your
8 name, ma'am?

9 BY A JUROR: Ida Mae Witty.

10 BY THE COURT: Ida Witty. And yours, sir?

11 BY A JUROR: Luther Robinson.

12 BY THE COURT: Okay, I'm going to add Ida Witty
13 and Luther Robinson, who are jurors who have come in
14 late, and I have qualified them, and they will be
15 added to the bottom of the list. We will have some
16 other questions to ask them, but we will go through
17 the individual with them on the front end.

18 (To the Clerk) Put them on the bottom of the
19 list, and then while I'm doing this, you can go ahead
20 and print me a new list which will have everybody on
21 it. Okay, there is another oath you need to take.

22 BY MR. CARTER: What are those names, Your Honor?

23 BY THE COURT: Ida Witty; that is W-I-T-T-Y.

24 BY MR. EVANS: Is that 106?

25 BY THE COURT: Yes. And Luther -- I'm sorry,
26 sir?

27 BY A JUROR: Luther Robinson.

28 BY THE COURT: Robinson. Number 107.

29 BY THE CLERK: Raise your right hand.

Individual Voir Dire - REST OF JURY OUT

1 (Two jurors were sworn to try the issues.)

2 **BY THE COURT:** Thank you. Y'all may step out.

3 (The Court conferred with the Clerk briefly.)

4 **BY THE COURT:** I need, the first one I need is
5 Felicia Ann Butts, number 2.

6 **BY MR. EVANS:** Are you going to put them on?

7 **BY THE COURT:** Yeah, I'm going to put them on the
8 stand. Number 2. There are no jurors in the room,
9 are there? Okay.

10 (JUROR 2, MS. FELICIA ANN BUTTS enters the
11 courtroom.)

12 **BY THE COURT:** Ms. Butts, if you would have a
13 seat up here, please.

14 INDIVIDUAL VOIR DIRE BY THE COURT:

15 Q. If you will, just state your name for the record,
16 please.

17 A. Felicia Ann Butts.

18 Q. Ms. Butts, you have indicated as many others did,
19 that you knew something about this case or at least had heard
20 of this case. How did you hear about it?

21 A. I work with a lady by the name of Christie Moore up
22 at Shoney's, and she told me that she was first cousin with,
23 I think Derrick Stewart.

24 Q. Derrick Stewart, BoBo Stewart?

25 A. Yes.

26 Q. Right. Okay, one of the victims; is that right?

27 A. That's right.

28 Q. And how long ago was that that you heard that?

29 A. It has been about three weeks ago.

Individual Voir Dire - REST OF JURY OUT

1 Q. About three weeks ago?

2 A. Before she quit.

3 Q. Did you form an opinion based on what you heard as
4 to the guilt or innocence of Mr. Flowers?

5 A. No, I didn't.

6 Q. If you were, sat on this case, could you decide the
7 case from the evidence that you heard here in court and the
8 instructions on the law that I gave you?

9 A. Yes, I could.

10 Q. Okay, now I ask this question. I don't remember
11 whether you responded to this. Do you know Mr. Flowers?

12 A. No, I don't.

13 Q. Okay. Did you know any of the victims?

14 A. No, I didn't.

15 BY THE COURT: Okay. Mr. Evans?

16 BY MR. EVANS: Your Honor, I think this was
17 another one of the ones -- is the Court going to go
18 any further on the death penalty or?

19 BY THE COURT: I'm not. I think I have asked all
20 the questions I need to ask on it.

21 INDIVIDUAL VOIR DIRE BY MR. EVANS:

22 Q. Ms. Butts, I'm going to be real short. It's my
23 understanding from what you have told the Judge that you have
24 a personal or religious belief that would keep you from
25 considering the death penalty; is that correct?

26 A. That's correct.

27 Q. And what you are telling us is no matter what the
28 case and no matter what the facts and no matter what the
29 Judge told you the law was, that under no circumstances could

Individual Voir Dire - REST OF JURY OUT

1 you consider giving the death penalty in any case. Is that
2 correct?

3 A. That's correct.

4 BY MR. EVANS: Nothing further, Your Honor.

5 BY MR. CARTER: We have a couple, Your Honor.

6 BY THE COURT: Sure.

7 INDIVIDUAL VOIR DIRE BY MR. CARTER:

8 Q. Now Ms. Butts, you said the way you heard about the
9 case was from a co-worker?

10 A. Yes, sir.

11 Q. You didn't read about it in the papers?

12 A. No, I didn't.

13 Q. You didn't hear anything about it on TV or see
14 anything on TV?

15 A. No, I didn't.

16 Q. You haven't heard about it in the community or the
17 beauty shop or any place like that?

18 A. No, I haven't.

19 Q. Now with respect to not being able to vote for the
20 death penalty, let me ask you this. Are you saying you
21 couldn't vote for the death penalty in any circumstances; is
22 that correct?

23 A. That's correct.

24 Q. I take that to mean that even if a relative of
25 yours had been killed and you were able to influence the DA
26 or anyone in seeking the death penalty against that person
27 that killed your relative, you still wouldn't seek it?

28 A. No.

29 Q. If you lost a child by way of murder--

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** -- I don't think that is a proper
2 question.

3 **BY MR. EVANS:** It's not.

4 **BY MR. CARTER:** Your Honor, I am basically trying
5 to determine if she can vote for it under any
6 circumstances.

7 **BY MR. EVANS:** That is not voting for it--

8 **BY THE COURT:** -- But that is not the law though.
9 The law is whether or not she could vote for it. If I
10 instructed her that she could and if the law
11 authorized it and if the facts of this case warranted
12 it, could she vote for it. That's the situation.
13 It's not under any scenario in the world. That is not
14 the law.

15 **BY MR. CARTER:** Okay, Your Honor. Thank you.

16 **BY THE COURT:** Anything further?

17 **BY MR. EVANS:** Nothing from the State, Your
18 Honor.

19 **BY THE COURT:** Thank you, ma'am. You may step
20 down--

21 **BY MR. CARTER:** -- One moment. One moment.

22 (Defense Counsel confer briefly.)

23 **BY MR. CARTER:** No further questions, Your Honor.

24 (Juror 2, Ms. Butts, leaves the courtroom.)

25 **BY THE COURT:** Any objection to striking her for
26 cause?

27 **BY MR. EVANS:** None, Your Honor.

28 **BY MR. DE GRUY:** No, Your Honor.

29 **BY THE COURT:** Number 3, Ms. Eskridge.

Individual Voir Dire - REST OF JURY OUT

1 **BY MR. EVANS:** You are going to do each of them
2 as we do them, aren't you?

3 **BY THE COURT:** Yes.

4 (JUROR 3, MS. LUCY MAE CLARK ESKRIDGE enters the
5 courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. State your name, Ms. Eskridge.

8 A. Lucy Mae Eskridge.

9 Q. Okay. Can you talk up loud enough where they can
10 hear you?

11 A. Lucy Mae Eskridge.

12 Q. Thank you, ma'am. Ms. Eskridge, you, as others on
13 the panel, indicated that you knew something about this case.
14 How is it that you know anything about it?

15 A. Oh, I just saw it in the newspaper.

16 Q. Okay, have you ever, have you ever talked to
17 anybody that purported to know the facts of this case?

18 A. No, sir.

19 Q. All right. So you just, what you saw in the
20 newspaper, is that all you know?

21 A. Yes, sir.

22 Q. Okay. Did you form any opinion based on what you
23 read in the newspaper as to the guilt or innocence of
24 Mr. Flowers?

25 A. (No immediate response.)

26 Q. You don't have to tell me what that opinion is; I
27 just need to know if you have one?

28 A. No, sir.

29 Q. Okay. Could you, if you were selected to try this

Individual Voir Dire - REST OF JURY OUT

1 case or to be on the jury in this case, could you make your
2 decision on the evidence that comes from the witness stand
3 and the law that I give you at the end of the case?

4 A. No, sir.

5 Q. You could not do that?

6 A. No, sir.

7 Q. All right, Mr. Evans.

8 INDIVIDUAL VOIR DIRE BY MR. EVANS:

9 Q. How are you doing, Ms. Eskridge?

10 A. I'm doing all right.

11 Q. I have just got one or two questions for you. I
12 want to make sure I understand what you told the Judge
13 earlier today. You are against the death penalty; is that
14 correct?

15 A. Yes, sir.

16 Q. And Ms. Eskridge, so that I will understand and the
17 Court will, is your belief such that no matter what the facts
18 of the case and no matter what the Judge told you the law
19 was, you could not give a death penalty in any circumstance?

20 A. No, sir.

21 BY MR. EVANS: Nothing further, Your Honor.

22 BY MR. CARTER: I have one. First of all, I need
23 to be clear in your ruling earlier, Your Honor. You
24 are saying that, if I understand your ruling a few
25 minutes ago, that whatever questions I ask her about
26 the death penalty have to be related to this case and
27 this case only?

28 BY THE COURT: It has to be related to what the
29 law is in relation to that question, Mr. Carter. What

Individual Voir Dire - REST OF JURY OUT

1 you asked wasn't.

2 INDIVIDUAL VOIR DIRE BY MR. CARTER:

3 Q. Okay. Ma'am, are you familiar with the case that
4 happened in Oklahoma City a few years ago where a federal
5 building was exploded and it killed a lot of people, men
6 women and children?

7 A. Yes. Yes, sir.

8 Q. Could you vote for the death penalty had you been
9 sitting in that case?

10 A. No, sir.

11 BY MR. CARTER: No further questions.

12 BY THE COURT: Thank you, ma'am. You may step
13 down.

14 (Juror 3, Ms. Eskridge, leaves the courtroom.)

15 BY THE COURT: From now on when we escort them
16 out, let's do it to speed it up a little bit; just
17 take them out that door and bring them in that door.
18 Wait a minute; tell them I'm not ready now until I get
19 ready. No, no, wait.

20 (Juror escorted back out of the courtroom.)

21 BY THE COURT: Y'all wait until I tell you to go
22 get somebody. Okay. Any objection to striking her
23 for cause?

24 BY MR. EVANS: No, sir.

25 BY MR. DE GRUY: No, Your Honor.

26 BY THE COURT: Number 3 is struck. Number 4,
27 Ms. Farmer.

28 (JUROR 4, MS. ELLA B. FARMER, enters the
29 courtroom.)

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** Have a seat right here, Ms.

2 Farmer.

3 INDIVIDUAL VOIR DIRE BY THE COURT:

4 Q. State your name, please, ma'am.

5 A. Ella B. Farmer.

6 Q. Ms. Farmer, you had indicated while ago that you
7 had heard something or knew something about this case. Could
8 you tell me how you know that?

9 A. I didn't say that.

10 Q. Oh, you didn't say that?

11 A. Uh-uh.

12 Q. You don't know anything about this case at all?

13 A. I say I wouldn't agree to indict, a murder verdict.

14 Q. You wouldn't--

15 A. -- You asked me would I--

16 Q. -- About the death penalty. I asked you about
17 that.

18 A. I said no to that.

19 Q. Okay. Well, you have never heard about this case?

20 A. I done heard about it. Just hearing, hearsay.

21 Q. Okay, you didn't hear about it from anybody -- I
22 don't want to put words in your mouth. Did you hear about it
23 from anybody that was a witness to it or a family member or
24 anything like that?

25 A. No.

26 Q. Did what you hear, was it just street talk or
27 gossip?

28 A. Word on the street.

29 Q. Did you read about it in the newspaper or anything

Individual Voir Dire - REST OF JURY OUT

1 like that?

2 A. A little bit.

3 Q. Okay. On what you heard and read, did you form an
4 opinion as to the guilt or innocence of Mr. Flowers?

5 A. Pretty much so.

6 Q. Okay. Would it take sworn evidence to overcome
7 that, Ms. Farmer?

8 A. Probably would.

9 Q. Okay. Thank you, ma'am.

10 **BY THE COURT:** Mr. Evans?

11 INDIVIDUAL VOIR DIRE BY MR. EVANS:

12 Q. How are you doing, Ms. Farmer?

13 A. All right.

14 Q. I have just got one question that I want to go back
15 into with you. You have told the Judge that you couldn't
16 give the death penalty; is that correct?

17 A. Yeah.

18 Q. Now is that because of your religion beliefs?

19 A. I just don't.

20 Q. You just don't believe in the death penalty?

21 A. I just wouldn't.

22 Q. Is that belief so strong that no matter what the
23 facts of the case or no matter what the Judge told you, you
24 couldn't give the death penalty in any case?

25 A. It is very strong.

26 **BY MR. EVANS:** Nothing further, Your Honor.

27 **BY MR. CARTER:** I have just one.

28 INDIVIDUAL VOIR DIRE BY MR. CARTER:

29 Q. So ma'am, are you saying that there aren't any

Individual Voir Dire - REST OF JURY OUT

1 facts, no circumstances that would be horrendous or bad
2 enough for you to ever vote for the death penalty?

3 A. No.

4 Q. Are you absolutely sure about that?

5 A. I am sure.

6 BY MR. CARTER: Thank you.

7 BY THE COURT: Thank you, ma'am. You may step
8 down, Ms. Farmer.

9 (Juror 4, Ms. Farmer leaves the courtroom.)

10 BY THE COURT: Any objection to striking her for
11 cause?

12 BY MR. EVANS: No, sir.

13 BY MR. DE GRUY: No, Your Honor.

14 BY THE COURT: Number 7, Ms. Johnson.

15 (JUROR NO. 7, MS. KAREN DIANE JOHNSON enters the
16 courtroom.)

17 VOIR DIRE EXAMINATION BY THE COURT:

18 Q. State your name, please.

19 A. Karen Diane Johnson.

20 Q. Ms. Johnson, you are aware of this case, are you
21 not?

22 A. I am.

23 Q. You have heard about it?

24 A. Yes.

25 Q. How is it that you heard about it?

26 A. Well, I have been living in Winona all my life, and
27 Derrick Stewart was good friends with my children.

28 Q. Okay. Did you hear it as street talk or gossip, or
29 did you hear it from people that purported to know the facts,

Individual Voir Dire - REST OF JURY OUT

1 like family members or law enforcement personnel?

2 A. Street talk, newspapers.

3 Q. Okay. Did you form any opinion based on what you
4 heard as to the guilt or innocence of Mr. Flowers?

5 A. Yes, I did.

6 Q. Would it take sworn testimony to overcome it?

7 A. I don't know. What do you mean?

8 Q. Well, I mean is your opinion such that he would
9 have to prove something to you?

10 A. Yes.

11 Q. Okay. Well, let me just take it one step further.
12 Because of that, do you feel that you could be a fair and
13 impartial juror in this case?

14 A. No, I don't.

15 Q. Thank you, ma'am.

16 BY THE COURT: Mr. Evans?

17 BY MR. EVANS: No, sir.

18 BY MR. DE GRUY: No, sir.

19 BY THE COURT: You may step down.

20 (Juror 7, Ms. Johnson leaves the courtroom.)

21 BY THE COURT: Any objection to striking her for
22 cause?

23 BY MR. EVANS: No, sir.

24 BY MR. DE GRUY: No, Your Honor.

25 BY THE COURT: Number 8, Judy Tompkins.

26 (JUROR NO. 8, MS. JUDY TOMPKINS, enters the
27 courtroom.)

28 INDIVIDUAL VOIR DIRE BY THE COURT:

29 Q. State your name, please, ma'am.

Individual Voir Dire - REST OF JURY OUT

1 A. Judy Tompkins.

2 Q. Ms. Tompkins, am I correct that you know something
3 about this case in the fact that you have at least heard
4 about it?

5 A. That's right.

6 Q. How did you hear about it?

7 A. Well.

8 Q. -- Street talk or gossip or?

9 A. News media, uh--

10 Q. So you have read the--

11 A. Street talk, gossip.

12 Q. Has anybody talked to you that was a witness or was
13 in law enforcement that -- you have indicated you were kin to
14 law enforcement. In fact, you were kin to the Sheriff who
15 was the Sheriff at the time this occurred. Did Robert ever
16 talk to you about this?

17 A. Not that I can remember. No. I don't think so.

18 Q. Well, I never did let you answer the other
19 question. Did you ever hear about it from anybody that
20 purported to be a witness in this case or claimed to know the
21 facts?

22 A. I will put it like this. I am friends with the
23 Rigby's.

24 Q. Okay.

25 A. And friends with BoBo Stewart's family. So I could
26 have.

27 Q. Okay. Did you form an opinion based on what you
28 heard or read as to the guilt or innocence of Mr. Flowers?

29 A. Yes, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Would it take sworn testimony to overcome that?

2 A. Yes, sir.

3 Q. Okay.

4 BY THE COURT: Mr. Evans, do you have any?

5 BY MR. EVANS: No questions, Your Honor.

6 BY MR. DE GRUY: No, Your Honor.

7 BY THE COURT: You may step down.

8 (Juror 8, Ms. Tompkins leaves the courtroom.)

9 BY THE COURT: Number 8A, Gale Lynn Townsend.

10 BY MR. DE GRUY: Your Honor, are we going to take
11 up the cause?

12 BY THE COURT: I'm sorry. Wait, wait just a
13 minute. I'm sorry. Y'all shook your head; I took
14 that to mean--

15 BY MR. EVANS: I have already marked it.

16 BY THE COURT: The Court excuses her for cause.
17 Any objection to that?

18 BY MR. EVANS: No, Your Honor.

19 BY MR. DE GRUY: No, Your Honor.

20 BY THE COURT: All right. Now I'm ready.

21 (JUROR NO. 8A, GALE LYNN TOWNSEND, enters the
22 courtroom.)

23 INDIVIDUAL VOIR DIRE BY THE COURT:

24 Q. State your name, please, ma'am.

25 A. Gale Lynn Townsend.

26 Q. Ms. Townsend, you were sworn in this morning; is
27 that correct?

28 A. Yes, sir.

29 Q. And you were in the audience while I was doing the

Individual Voir Dire - REST OF JURY OUT

1 voir dire and doing all the questioning?

2 A. Correct.

3 Q. Have you ever heard of this case?

4 A. I just moved here from another state.

5 Q. Okay, how long have you been living here?

6 A. Since '97.

7 Q. Since '97?

8 A. Uh-hum.

9 Q. Okay. In that period of time, have you heard
10 anything about this case like street talk, gossip or anything
11 like that?

12 A. No, sir.

13 Q. Has anybody discussed this matter with you or in
14 your presence that purported to know the facts like any
15 witness to it?

16 A. No, sir.

17 Q. Okay. I want to make sure that I have your
18 response to this question correctly. If it got to the point
19 to where the jury returned a verdict of guilty and you were
20 on that jury, and it would get to the sentencing phase where
21 the death penalty comes into play, do you have any religious
22 or philosophical belief or any personal belief that would
23 prohibit you from imposing the death penalty if I instructed
24 you that the law authorized it, and you found from the facts
25 that the facts warranted it? Could you do that?

26 A. Yes, sir.

27 Q. Okay. Ms. Townsend, do you know of any reason that
28 you could not be a fair and impartial juror in this case?

29 A. Yes, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. You do?

2 A. Yes.

3 Q. Okay. Do you think you could be fair and
4 impartial?

5 A. No.

6 Q. Okay.

7 BY THE COURT: Mr. Evans?

8 BY MR. EVANS: No questions, Your Honor.

9 BY MR. DE GRUY: Yes, Your Honor.

10 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

11 Q. You are saying that you could not be a fair juror
12 or you could be a fair juror?

13 A. I could not be a fair juror, no. That's what I
14 meant. No fair.

15 Q. And when you answered the Judge's questions and the
16 earlier questions this morning, you haven't said anything
17 that would indicate you couldn't be fair. Could you tell us
18 what it is that would make you an unfair juror?

19 A. About the death penalty. I don't think I could
20 sentence no one, no.

21 BY THE COURT: Okay, well, excuse me then. Let
22 me go there.

23 FURTHER INDIVIDUAL VOIR DIRE BY THE COURT:

24 Q. Now I want to make sure I understand you. You are
25 saying you could not impose the death penalty; is that right?

26 A. Correct.

27 Q. Okay. Could you not impose the death penalty --
28 let's say I told you that the law authorized it in this case,
29 that the law said it was okay for the jury to do it, and

Individual Voir Dire - REST OF JURY OUT

1 after hearing all the facts, you determined that the facts
2 warranted it; would your personal beliefs still keep you from
3 imposing the death penalty?

4 A. I wouldn't want to send nobody to death penalty if
5 that's what you are saying.

6 Q. Okay.

7 BY MR. EVANS: May I follow up?

8 BY THE COURT: Sure. Well, I cut him off, and I
9 just wanted to make sure we got -- let him finish and
10 then you can come back.

11 BY MR. DE GRUY: It's the first time I ever got
12 to go first.

13 FURTHER INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

14 Q. On your questionnaire, do you recall filling out
15 the questionnaire, about five pages long?

16 A. Yes.

17 Q. The last question, number 38 asked that same
18 question. Do you recall your answer?

19 A. No, I don't.

20 Q. What is on the questionnaire is "depends on case."

21 A. Okay, right.

22 Q. So is what you are telling us that you would feel
23 uncomfortable making that decision?

24 A. Correct. Uncomfortable.

25 Q. But you understand that most jurors are going to
26 feel uncomfortable in this situation?

27 A. Right.

28 Q. That even deciding whether or not someone is guilty
29 or innocent?

Individual Voir Dire - REST OF JURY OUT

1 A. Right, but--

2 Q. Normal people would feel uncomfortable about that?

3 A. Yes.

4 Q. But in order for the justice system to work, we
5 have to have twelve people who are willing to take on that
6 unpleasant task and make that decision based on the evidence
7 and the law.

8 A. Uh-hum.

9 Q. So my question is are you willing to, if selected,
10 take on that unpleasant task?

11 A. No.

12 Q. Are you just saying you don't want to serve as a
13 juror?

14 A. I don't want to serve as a juror, no.

15 Q. And I guess as we are in a time of war, it's a good
16 analogy to make right now. Most people going off to war
17 don't want to go.

18 A. Correct.

19 Q. They don't want to kill, and they don't want to
20 die.

21 A. Correct.

22 Q. But would you agree that someone has to go?

23 A. Yes.

24 Q. And so my question is if you were drafted for
25 this--

26 BY MR. EVANS: -- Your Honor, that is not proper.

27 BY THE COURT: I'm going to let him ask it.

28 BY MR. DE GRUY:

29 Q. If you were drafted for this jury, would you serve?

Individual Voir Dire - REST OF JURY OUT

1 A. I wouldn't like to.

2 BY THE COURT: Well, that question probably isn't
3 because she doesn't get a choice in the draft. She
4 gets the right to answer that question in relation to
5 the death penalty, and we have got to determine from
6 that.

7 BY MR. DE GRUY:

8 Q. Just like in the situation of the draft, you have a
9 conscientious objection. You have a conscientious objector--

10 BY MR. EVANS: --Your Honor, I again object.

11 That is not proper comparing that to jury service.

12 BY THE COURT: I don't think it is either.

13 BY MR. DE GRUY:

14 Q. We understand that you don't want to consider the
15 death penalty for anybody. Is that fair to say?

16 A. Correct.

17 Q. My question is if you were selected on a jury and
18 you listened to all the evidence and the Judge sent you back
19 with instructions of law and said follow these instructions
20 and you may consider the death penalty, could you do that?

21 A. No.

22 Q. Under no circumstance?

23 A. No.

24 Q. Even though you said on your questionnaire it
25 depends on the case?

26 A. Yeah.

27 BY MR. DE GRUY: That would be all the questions.

28 BY MR. EVANS: No questions.

29 BY THE COURT: Thank you, ma'am. You may step

Individual Voir Dire - REST OF JURY OUT

1 down.

2 (Juror 8A, Ms. Townsend, leaves the courtroom.)

3 BY MR. EVANS: No objection.

4 BY THE COURT: To strike her for cause?

5 BY MR. EVANS: To striking her.

6 BY MR. DE GRUY: I have an objection to being
7 limited on asking the question and making the
8 comparison between military service and jury service
9 because I do believe the two do equate. They are
10 civic duties, but based on the answers, I have no--

11 BY THE COURT: Well, among other things, she said
12 she could not be fair and impartial. And then under
13 extensive questioning, she said she could not impose
14 the death penalty regardless of the facts or the law.
15 And she did that in response to my question and to
16 yours. So I strike her for cause.

17 George Woods.

18 (JUROR NO. 9, GEORGE WILLIE WOODS, enters the
19 courtroom.)

20 INDIVIDUAL VOIR DIRE BY THE COURT:

21 Q. Have a seat. State your name.

22 A. George Woods.

23 Q. Mr. Woods, you need to speak up so they can hear
24 you; okay?

25 A. George Willie Woods.

26 Q. Thank you. Mr. Woods, have you heard about this
27 case?

28 A. Yes, sir. I heard about it, but I works out of
29 town; I don't hear too much.

Individual Voir Dire - REST OF JURY OUT

1 Q. Okay, was what you heard street talk or gossip?

2 A. Mostly street talk.

3 Q. Did you hear about it from anybody that was a
4 witness to this case or from any family member involved with
5 any of this?

6 A. No, sir.

7 Q. Did you read about it in the newspaper?

8 A. No, sir.

9 Q. Did you hear about it on the radio?

10 A. I heard about it on the radio. Yes, sir.

11 Q. Did you form an opinion as to the guilt or
12 innocence of Mr. Flowers based on what you heard?

13 A. No, sir. I never got into it like that.

14 Q. Okay. All right, Mr. Evans -- well, let me ask you
15 this. Do you know Mr. Flowers?

16 A. Yes, sir. I know him. Been knowing him, as a
17 matter of fact, all my life.

18 Q. All right, would the fact that you know-- would you
19 consider yourself friends?

20 A. Oh, yes, sir. We went together for occasions.

21 Q. Would that affect you at all in this case and keep
22 you from being fair and impartial?

23 A. Yes, sir. It sure would.

24 Q. Okay. Thank you, sir.

25 **BY THE COURT:** Mr. Evans.

26 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

27 Q. Mr. Woods, in addition to the fact that being
28 friends with the Defendant would keep you from being fair and
29 impartial--

Individual Voir Dire - REST OF JURY OUT

1 A. -- Excuse me, sir. Could you talk a little louder?
2 I have a hearing problem.

3 Q. All right, you just said that you couldn't be a
4 fair and impartial juror on this case because you know the
5 Defendant; is that right?

6 A. That's right.

7 Q. You have also said that you don't believe in the
8 death penalty; is that correct?

9 A. That's true.

10 Q. And is your belief such against the death penalty
11 that you couldn't consider it on any case?

12 A. Sir, if I understand you right, I don't believe in
13 the death penalty. I don't believe in that period.

14 Q. Okay, that is my question. And no matter what the
15 Judge told you the law was or the facts of the case, you
16 yourself couldn't consider the death penalty on any case; is
17 that correct?

18 A. No, sir. I wouldn't.

19 **BY MR. EVANS:** Nothing further, Your Honor.

20 BY THE JUROR:

21 A. I don't think we are supposed to do that.

22 **BY MR. DE GRUY:** Just a couple of questions, Your
23 Honor.

24 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

25 Q. Mr. Woods, do you recall -- I am holding up the
26 questionnaire that was sent to you. Do you recall filling
27 that out? It's a five page questionnaire.

28 A. The paper I got through the mail?

29 Q. Yes.

Individual Voir Dire - REST OF JURY OUT

1 A. No, sir, because my glasses is broke in December,
2 and I don't get them back until March, the first of March.

3 Q. Did somebody else fill it out?

4 A. My granddaughter.

5 Q. Okay. Did she ask you the questions?

6 A. Right. Right. I wear glasses.

7 Q. There was the same question that the Judge is
8 asking you this morning was on that questionnaire about the
9 death penalty. It asked, Do you have any personal or
10 religious belief that would prevent you from voting to impose
11 the death penalty if the facts justified it? And the answer
12 that is written down is "Yes, I am against it for under age
13 children."

14 A. I don't believe for under age. I don't believe the
15 death penalty should be for under age kids, and also, I don't
16 believe it should be for man because I don't think man is
17 supposed to put no one to death. I don't think they are
18 supposed to decide that.

19 Q. Okay, so this was what you were thinking at the
20 time, but it is actually broader than that?

21 A. Right.

22 BY MR. DE GRUY: I have no further questions.

23 BY THE COURT: You may step down, Mr. Woods.

24 (Juror 9, Mr. Woods, leaves the courtroom.)

25 BY THE COURT: Any objection to striking him for
26 cause?

27 BY MR. EVANS: No, sir.

28 BY MR. DE GRUY: No, Your Honor.

29 BY THE COURT: David Miller.

Individual Voir Dire - REST OF JURY OUT

1 (JUROR NO. 11, MR. DAVID E. MILLER, enters the
2 courtroom.)

3 INDIVIDUAL VOIR DIRE BY THE COURT:

4 Q. State your name.

5 A. David Miller.

6 Q. Mr. Miller, have you heard anything about this case
7 or know anything about it?

8 A. Through family and friends.

9 Q. Okay. Through your family or their, or the family
10 of some of the victims?

11 A. Some of the victims.

12 Q. They have talked to you about it or talked about it
13 in your presence?

14 A. Just a little bit.

15 Q. Okay. Have you read newspaper articles about it?

16 A. No.

17 Q. How about radio?

18 A. No.

19 Q. Have you heard about it recently?

20 A. No.

21 Q. Have you formed an opinion in this matter as to the
22 guilt or innocence of Mr. Flowers based on what you heard?

23 A. Yes, sir.

24 Q. Okay. Would it take sworn testimony to overcome
25 that?

26 A. I'm not for sure.

27 Q. Could you be a fair and impartial juror in this
28 case?

29 A. I'm not for sure.

Individual Voir Dire - REST OF JURY OUT

1 Q. You are not for sure?

2 A. No.

3 BY THE COURT: All right, Mr. Evans.

4 INDIVIDUAL VOIR DIRE BY MR. EVANS:

5 Q. Mr. Miller, I know it's not easy sometimes to
6 decide one way or the other. Of course, that is what we are
7 here for today is to try to find a jury that can listen to
8 the evidence that comes out in court and not anything they
9 have already heard and base their decision strictly on the
10 evidence that they hear in the courtroom as to guilt or
11 innocence. And what it boils down to, my question is simply
12 this: If you were picked as a juror, can you disregard
13 anything you may have heard earlier and base your decision of
14 guilt or innocence on what you hear in the courtroom?

15 A. Possibly, yes.

16 Q. And I know it's not easy, but I need a yes or no
17 answer.

18 A. Yes, sir.

19 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

20 Q. Mr. Miller, you said there were discussions with
21 victims' family members?

22 A. I knew one of the victims.

23 Q. You knew one of the victims?

24 A. Yes.

25 Q. Who was that?

26 A. Carmen Rigby.

27 Q. Were you close to her?

28 A. Pretty close.

29 Q. And in those discussions, I assume because you

Individual Voir Dire - REST OF JURY OUT

1 formed an opinion on the case, there were discussions about
2 whether or not Mr. Flowers was guilty?

3 A. (Witness nods his head.)

4 Q. And you formed an opinion on that?

5 A. (Witness nods his head.)

6 **BY THE COURT:** You need to speak up. She has got
7 to take it down.

8 **BY THE JUROR:**

9 A. Yes, sir.

10 Q. Now are you telling us that there may be some
11 amount of evidence that Mr. Flowers could bring forward that
12 would change your mind?

13 A. Possibly, yes, sir.

14 Q. Were there also discussions of what the appropriate
15 sentence would be for whoever was responsible?

16 A. No.

17 Q. You never discussed that with?

18 A. No.

19 **BY MR. DE GRUY:** One moment.

20 (Defense Counsel confer.)

21 Q. Mr. Miller, if you heard this evidence and it
22 changed your mind, do you feel like you would have a hard
23 time going back to your friends and facing them?

24 A. No.

25 Q. Do you think that if Mr. Flowers were to present
26 enough evidence to change your mind, you would be able to
27 walk into court and vote not guilty?

28 A. Probably so, yes.

29 Q. Now would that amount of evidence -- and we can't

Individual Voir Dire - REST OF JURY OUT

1 really quantify it, but it would be a high burden for him?

2 Is it fair to say that?

3 A. Yes, sir.

4 BY MR. DE GRUY: I have no further questions.

5 BY MR. CARTER: One more, Your Honor.

6 (Mr. Carter confers with Mr. de Gruy.)

7 BY MR. DE GRUY: Nothing further.

8 FURTHER INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. Mr. Miller, let's say after hearing all the
10 evidence in the case, you determined that based on the law
11 that I gave you and on the testimony as you heard it and
12 after consultation with your fellow jurors, you determined
13 that you needed to vote not guilty in this case. Do you feel
14 like after that, then you would owe, when you saw the Rigby
15 relatives again, that you would be embarrassed in any way or
16 feel that you owed them an explanation?

17 A. (Pause) I don't know; it is hard. That is a hard
18 question.

19 Q. All right, sir.

20 BY THE COURT: Any further questions for him?

21 BY MR. EVANS: No, sir.

22 BY THE COURT: Thank you, sir. You may step out.

23 (Juror 11, Mr. Miller, leaves the courtroom.)

24 BY THE COURT: What do y'all say?

25 BY MR. CARTER: That is a cause, Your Honor.

26 BY MR. EVANS: Your Honor, I object to cause. I
27 think it may be plenty for strike, but he specifically
28 said that he could base any decision he made on what
29 he heard in the courtroom and disregard anything else

Individual Voir Dire - REST OF JURY OUT

1 he said.

2 BY MR. DE GRUY: That much he did say, but he
3 also clearly stated that the Defendant carried a heavy
4 burden, and that is not the law. Whether he says I
5 can follow the law, that is not the law. And he
6 clearly does not have a presumption of innocence today
7 and will not any time during this trial.

8 BY THE COURT: No, his statement was clear that
9 he had formed an opinion as to the guilt of
10 Mr. Flowers, and it would take sworn testimony to
11 overcome it. He is also, the information he got was
12 from one of the victim's family, who he was close
13 friends with. And I think he was straightforward with
14 everybody and he gave an honest answer to this thing,
15 but I don't think in the long run he can be fair and
16 impartial. So I strike him for cause. Number 13.
17 Willie Elliott.

18 (JUROR NO. 13, MR. WILLIE FLOYD ELLIOTT, enters the
19 courtroom.)

20 INDIVIDUAL VOIR DIRE BY THE COURT:

21 Q. State your name.

22 A. Willie Elliott.

23 Q. Mr. Elliott, you need to talk loud enough for them
24 to hear you; okay?

25 A. Okay.

26 Q. Mr. Elliott, have you heard anything about this
27 case?

28 A. I heard about it.

29 Q. Okay, how did you hear about it?

Individual Voir Dire - REST OF JURY OUT

1 A. Somebody told me about it, so I don't know.

2 Q. Street talk, gossip and that kind of stuff?

3 A. Yeah.

4 Q. Did you form any opinion as to the guilt or
5 innocence of Mr. Flowers based on what you heard?

6 A. I don't know nothing about it. I can't say.

7 Q. Okay, is that a no? That you did not?

8 A. Well, see I just moved back here, and I just heard
9 about this case.

10 Q. Okay. When did you move back here?

11 A. I moved back here in 2000.

12 Q. Okay. From what you heard, have you made up your
13 mind about this case?

14 A. From what I heard, I can't make up my mind up. I
15 don't know.

16 Q. Then will you, Mr. Elliott, can you decide this
17 case on the evidence that comes from the witness stand where
18 you are sitting and the law that I give you at the end of the
19 case? Can you do that?

20 A. Um, yeah, I can do that.

21 Q. Okay. Do you know Mr. Flowers or his family?

22 A. No, I don't know his family.

23 Q. Do you know anybody involved in this case
24 personally?

25 A. No, I don't.

26 BY THE COURT: Okay. Mr. Evans.

27 INDIVIDUAL VOIR DIRE BY MR. EVANS:

28 Q. Mr. Elliott, how are you doing today?

29 A. Fine. How are you?

Individual Voir Dire - REST OF JURY OUT

1 Q. If I understand, have got this down right, you told
2 the Judge that you do not believe in the death penalty; is
3 that right?

4 A. Right.

5 Q. Is that a personal or a religious belief?

6 A. That's a personal belief.

7 Q. And is that belief that at no time should anybody
8 ever get the death penalty?

9 A. Well, I guess they should sometimes, but I don't
10 know nothing about this case so I couldn't say.

11 Q. All right, well, disregarding this case, let me ask
12 you this about your opinions, and nobody is judging your
13 opinions.

14 A. Yeah.

15 Q. You have a right to have whatever opinions you
16 want. But it may affect us, and that's why it is very
17 important that we know. Is what you are telling us that if
18 you were picked as a juror, that your belief is such against
19 the death penalty that no matter what the Judge told you the
20 law was or the facts of the case, that you yourself could not
21 impose the death penalty in any case?

22 A. Right.

23 BY MR. EVANS: Nothing further, Your Honor.

24 BY MR. CARTER: I have a couple.

25 INDIVIDUAL VOIR DIRE BY MR. CARTER:

26 Q. Now Mr. Elliott, my name is Ray Carter. Do you
27 remember the federal building that exploded in Oklahoma City,
28 Oklahoma a few years ago? Do you remember that? Did you
29 hear about it?

Individual Voir Dire - REST OF JURY OUT

1 A. I heard about it.

2 Q. Okay, and also the World Trade buildings got hit in
3 New York?

4 A. Yeah.

5 Q. About a couple of years ago. And I ask you this
6 because I'm trying to determine whether you could actually
7 vote for the death penalty in any situation. For the guy who
8 blew up the federal building in Oklahoma City, you don't
9 think he deserved the death penalty?

10 A. Well.

11 Q. Could you vote for the death penalty in that case?

12 A. Well, in that case I could.

13 Q. Okay. In that case you could because there were
14 several people killed; is that what you are saying?

15 A. Yeah.

16 Q. Now you understand that there were -- one moment,
17 Your Honor.

18 (Defense Counsel confer.)

19 Q. Okay, sir. In this particular case, now you say
20 you heard about it. Did you hear that four people were
21 killed?

22 A. Four people killed in the--

23 Q. In this particular case that--

24 A. --Oh, I don't know about this case.

25 Q. Okay, if there were four people, if the facts were
26 that four people were killed in this particular case.

27 A. Yeah.

28 Q. And based on the facts if the facts were
29 sufficient, could you vote if the facts were sufficient and

Individual Voir Dire - REST OF JURY OUT

1 you were given the law and told that you could based on
2 certain facts and based on law, could you vote for the death
3 penalty if you thought it was warranted?

4 A. Well, I could vote on it if it was worth voting on.

5 **BY THE COURT:** I'm sorry; I didn't understand
6 you?

7 A. I could vote on it if it was worth, you know,
8 voting on, but I don't know nothing about this case. See,
9 I'm just going by what I hear so.

10 Q. I take that to mean that in some situations you
11 could vote for the death penalty, and then some situations
12 you wouldn't?

13 A. I wouldn't right. Thank you.

14 **BY MR. EVANS:** May I, Your Honor?

15 **BY THE COURT:** Uh-hum.

16 **BY MR. CARTER:** We object, Your Honor.

17 **BY THE COURT:** I'm going to allow it because we
18 have got to figure all this out.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. We are trying to figure out exactly where you are
21 on this particular issue. Now a few minutes ago you said
22 that you could not vote for the death penalty on any case.
23 What would be different?

24 A. Well, see the thing about it, I have never been in
25 a court case, and I really don't know nothing about court.

26 Q. All right, but my question is real simple.

27 A. Well, I know that.

28 Q. If you were picked as a juror and you sat over here
29 in this box and you heard evidence and the Judge gave you an

Individual Voir Dire - REST OF JURY OUT

1 instruction that the death penalty was appropriate in this
2 case and the facts justified it, could you vote for the death
3 penalty?

4 A. No. I couldn't.

5 BY MR. EVANS: Thank you.

6 BY THE COURT: Okay, Mr. Elliott. You may step
7 down.

8 (Juror 13, Mr. Elliott leaves the courtroom.)

9 BY MR. CARTER: Your Honor, his answers was
10 clearly conflicting. In one instance he said he
11 couldn't, and in another instance he said he could.
12 He said in a situation where there were several people
13 killed, he could consider it. Mr. Evans turned around
14 and questioned him about this particular case which he
15 doesn't know the facts of.

16 BY THE COURT: And he didn't know the facts about
17 the World Trade Center either.

18 BY MR. CARTER: I understand, but I'm sure he has
19 heard that there was more than one person killed. So
20 cause is not justified in this particular instance.

21 BY MR. EVANS: Your Honor, we disagree. He told
22 you that there was no way he could do it. He was
23 specific with me, and the law is clear that where a
24 person is unequivocal, that it's up to the Judge to
25 determine whether or not he could be a proper juror in
26 this case, and I think clearly from his answers he
27 couldn't be.

28 BY THE COURT: The only time that he equivocated
29 on it was when you gave this abstract hypothetical

Individual Voir Dire - REST OF JURY OUT

1 concerning the death of three or four thousand folks
2 in New York. I don't think that applies, and I don't
3 think he-- his answer to me is that he could not
4 impose it, and it is clear he could not impose it if
5 the--

6 **BY MR. CARTER:** --Your Honor, if I may respond
7 briefly. Even when I asked him about four people and
8 said that in situations where four people are killed,
9 he said he could, and I think the record will reflect
10 that.

11 **BY THE COURT:** Okay. I'm striking him for cause.
12 15, Tammy Oliver.

13 (JUROR NO. 15, MS. TAMMY JONES OLIVER, enters the
14 courtroom.)

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. State your name, please, ma'am.

17 A. Tammy Oliver.

18 Q. Ms. Oliver, you need to talk loud enough for them
19 to hear you now.

20 A. Tammy Oliver.

21 Q. Ms. Oliver, have you heard something about this
22 case?

23 A. Well, it has been a while ago but just hearsay.

24 Q. Street talk and stuff like that?

25 A. Yeah.

26 Q. Did you ever have any conversations or get any
27 information from any member of either the Defendant's family
28 or the victims' family?

29 A. No, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Did you know any of the people?

2 A. I knew BoBo, and I knew of Carmen. And that's all.

3 Q. Would that relationship affect you at all in this
4 case?

5 A. No.

6 Q. Okay. Did you form any opinions as to the guilt or
7 innocence of Mr. Flowers based on what you heard?

8 A. Not really because it really wasn't much. My
9 sister's trailer burned the same day, so I was really tied up
10 in all that.

11 Q. Okay. Could you, would you be able, if you were a
12 juror, to decide this case on the facts that come from this
13 witness stand where you are sitting and the law that I give
14 you at the end of the case, and after consultation with your
15 fellow jurors, then reach a decision independent of anything
16 that you might have heard? Could you do that?

17 A. I could reach a fair decision.

18 Q. Okay. Thank you, ma'am.

19 BY THE COURT: Wait, wait. I'm sorry.

20 BY A JUROR: Oh, that was too easy, huh?

21 BY THE COURT: That was just me.

22 BY MR. EVANS: Not yet.

23 INDIVIDUAL VOIR DIRE BY MR. EVANS:

24 Q. How are you doing, Ms. Oliver?

25 A. I am just fine, thanks.

26 Q. Ms. Oliver, as the Judge told you earlier this
27 morning, at this phase in this trial or any trial, this
28 defendant or any other defendant is presumed innocent. The
29 reason for that, it's up to us, the State of Mississippi, to

Individual Voir Dire - REST OF JURY OUT

1 prove in open court his guilt. Do you understand that
2 theory?

3 A. Yes, sir.

4 Q. And for that reason, that is why it is so important
5 that if you have heard anything, you disregard it and base
6 your decision strictly on what you have heard in the
7 courtroom. Can you do that?

8 A. Yes, sir.

9 Q. And on the contrary of that, that presumption that
10 goes with him that protects him at this point only protects
11 him up until the point that we have proven to you beyond a
12 reasonable doubt that he is, in fact, guilty in court. Do
13 you understand that?

14 A. I understand that.

15 Q. So basically, my final question on this part is
16 this. If you were picked as a juror, whatever you may have
17 heard, can you disregard that, base your opinion strictly on
18 the evidence that you hear in court and give him the
19 presumption of innocence until such time as we have proven to
20 you beyond a reasonable doubt that he is guilty?

21 A. Yes, sir. I could.

22 **BY MR. EVANS:** Tender the witness, Your Honor.

23 Juror, I'm sorry.

24 INDIVIDUAL VOIR DIRE BY MR. CARTER:

25 Q. Ms. Oliver, how well do you know BoBo? How well
26 did you know BoBo? I'm sorry.

27 A. Well, actually I knew Dale, which is his brother,
28 and my husband and him used to fish together ten years ago or
29 so.

Individual Voir Dire - REST OF JURY OUT

1 Q. Did BoBo ever come to your house?

2 A. No.

3 Q. You ever go to his?

4 A. No.

5 Q. What about Ms. Rigby? Did you ever go to her
6 house?

7 A. No.

8 Q. She ever come to yours?

9 A. Uh-uh.

10 Q. Okay, I believe you said you hadn't formed an
11 opinion. Is that correct?

12 A. I have not.

13 Q. Out of the statements that you heard people make
14 about this case, did you ever hear anybody say that he wasn't
15 guilty?

16 A. No. Basically, to be honest, everybody said that
17 he was guilty is what I have heard.

18 Q. And to be clear, you didn't hear a single person
19 say that he wasn't guilty; is that correct?

20 A. No. But I didn't hear a lot from a lot of people.
21 It was just the few people that I did hear. That's what
22 they -- that's their opinion.

23 Q. Can you give me some rough estimate of how many
24 people you heard say he was guilty?

25 A. Five maybe. Less than ten.

26 Q. Out of these five people, are they people you know
27 well?

28 A. Um, two or three of them are.

29 Q. Are they credible? Do you believe them, what they

Individual Voir Dire - REST OF JURY OUT

1 say?

2 A. Not always.

3 Q. Now you heard four or five people say that he did
4 it. Yet you are still maintaining that you haven't formed an
5 opinion about his guilt or innocence; is that correct?

6 A. I have not formed an opinion. I don't know the
7 circumstances. I wasn't there. I mean I would like to hear
8 both sides of it before I form an opinion.

9 Q. If you were selected as a juror, would you feel
10 that you owe anything to BoBo Stewart's family or to Carmen
11 Rigby's family?

12 A. No, I don't.

13 Q. If you were to sit as a juror and we presented
14 facts or the District Attorney did not prove beyond a
15 reasonable doubt that Mr. Flowers was, in fact, guilty, would
16 you feel any embarrassment or shame towards going back and
17 meeting Ms. Rigby's family or Mr. Stewart's family?

18 A. No, I wouldn't.

19 BY THE COURT: Anything else?

20 (Defense Counsel confer.)

21 BY MR. CARTER:

22 Q. Did you attend either funeral?

23 A. No, I did not.

24 BY MR. CARTER: No further questions.

25 A. I wasn't here.

26 BY THE COURT: Anything else?

27 BY MR. EVANS: Nothing from the State.

28 BY THE COURT: Thank you, Ms. Oliver. You may
29 step down.

Individual Voir Dire - REST OF JURY OUT

1 (Juror 15, Ms. Oliver, leaves the courtroom.)

2 BY THE COURT: Either side have any objection to
3 her for cause?

4 BY MR. EVANS: No, sir.

5 BY MR. CARTER: Do we have any objection to cause
6 was the question?

7 BY THE COURT: Uh-hum.

8 BY MR. CARTER: No, sir.

9 BY THE COURT: Stanley Topps.

10 (JUROR NO. 16, MR. STANLEY A. TOPPS, enters the
11 courtroom.)

12 INDIVIDUAL VOIR DIRE BY THE COURT:

13 Q. State your name, Mr. Topps.

14 A. Stanley Topps.

15 Q. Mr. Topps, have you heard anything about this case?

16 A. No.

17 Q. You haven't even heard any street talk or gossip or
18 anything like that?

19 A. No, sir.

20 Q. Did you even know that it happened?

21 A. Yes, sir.

22 Q. Okay, how did you know that it happened?

23 A. I seen the police down at the store.

24 Q. Okay. Did you ever ask anybody what was going on?

25 A. No, I just heard it on the radio.

26 Q. So you did hear something about the case?

27 A. I did.

28 Q. Did you form any opinion based on what you heard as
29 to the guilt or innocence of Mr. Flowers?

Individual Voir Dire - REST OF JURY OUT

1 A. No, sir.

2 Q. If you were selected as a juror in this case, could
3 you listen to the evidence that comes into court and the
4 instructions of law that I give you and consult with your
5 fellow jurors and decide the case on that basis to the
6 exclusion of anything you might have heard?

7 A. Yes, sir.

8 Q. Have you formed any opinion one way or another in
9 this case?

10 A. Yes, sir.

11 Q. You have? Okay, would it take sworn testimony to
12 overcome that opinion?

13 A. Yes, sir.

14 Q. Okay. Do you feel then that you could be fair and
15 impartial?

16 A. Yes, sir.

17 Q. Well, if you have got an opinion, how can--

18 A. -- well--

19 Q. --you be fair and impartial?

20 A. One thing, I know the fellow.

21 Q. Know who?

22 A. Mr. Curtis.

23 Q. Oh, you know him?

24 A. Yes, sir.

25 Q. Would the -- how do you know him?

26 A. I used to work with him.

27 Q. Okay. Would that fact affect you to the point to
28 where you could not be a fair and impartial juror for both
29 sides in this case?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir.

2 BY THE COURT: Mr. Evans.

3 INDIVIDUAL VOIR DIRE BY MR. EVANS:

4 Q. All right, Mr. Topps, basically what you are saying
5 is because you worked with the Defendant, you couldn't be
6 fair in this particular case; is that correct?

7 A. Yes, sir.

8 Q. Where did you work with him?

9 A. Richardson Brothers.

10 Q. And when was that?

11 A. About, about seven years ago.

12 Q. Did you fill out a questionnaire?

13 A. Yeah -- no, I didn't never get a chance to turn it
14 in.

15 Q. Okay, I knew I never did see one. What is your
16 date of birth?

17 A. March 28, '72.

18 Q. Do you have any felony convictions?

19 A. No, sir.

20 Q. How about in Cook County, Illinois?

21 A. Oh, Cook County.

22 Q. You do have a felony conviction in Cook County,
23 Illinois?

24 A. Yes, sir.

25 Q. For delivery of a controlled substance?

26 A. Yes, sir.

27 BY MR. EVANS: Nothing further, Your Honor.

28 BY MR. CARTER: I have a couple.

29 BY THE COURT: Well, okay. They need to relate

Individual Voir Dire - REST OF JURY OUT

1 to that last question. They are going to have to
2 relate to that last question to have any significance.
3 If he is a convicted felon, he is disqualified from
4 service.

5 **BY MR. CARTER:** Okay, one moment, Your Honor.
6 (Defense Counsel confer.)

7 **BY MR. CARTER:** No questions, Your Honor.

8 **BY THE COURT:** You are free to go, Mr. Topps.
9 You can go ahead and leave.

10 **BY BAILIFF BROWNING:** You said free to leave the
11 courthouse?

12 **BY THE COURT:** Yes.

13 (Juror 16, Mr. Topps, leaves the courtroom.)

14 **BY THE COURT:** The Court finds two things. One,
15 that he couldn't be fair and impartial. Two -- well,
16 there is three things. Two, he didn't answer the
17 questions correctly this morning. And three, he is a
18 convicted felon which would disqualify him from
19 serving on a jury in this state. So I don't even know
20 that that is for cause. I don't know, even know that
21 it gets to that point, but he is excused.

22 **BY MR. CARTER:** Your Honor, I think, just
23 observation; I could be wrong. Your question, would
24 it take sworn testimony to overcome that opinion that
25 you have formed, I'm not sure that every juror
26 understands that, that that is something that is real
27 easily understandable.

28 **BY THE COURT:** Well, so far they have answered
29 the question correctly every time.

Individual Voir Dire - REST OF JURY OUT

1 **BY MR. CARTER:** Except that one. It seems as
2 though that was one was confused about it. I could be
3 wrong. That is just my opinion.

4 **BY THE COURT:** Well, the test and the reason you
5 ask that is the defendant has to prove nothing.

6 **BY MR. CARTER:** Right.

7 **BY THE COURT:** And if the juror is going to
8 require him to put on evidence to overcome that
9 opinion they have already formed, that disqualifies
10 them in my opinion. What do you think?

11 **BY MR. DE GRUY:** Your Honor, that is correct, and
12 you followed up with juror Miller earlier for that
13 point. But having formed an opinion if that opinion
14 is that Mr. Flowers is not guilty, but that they are
15 willing to listen to evidence from the State, that's
16 what the law requires of them.

17 **BY THE COURT:** I know, and that's the reason I
18 followed that up and asked them then based on what
19 they have heard -- they formed the opinion on what
20 they heard or what they know, and based on that, can
21 they be fair and impartial. That's the reason it's
22 not a one question thing. It is several questions,
23 and certainly y'all are entitled to follow up on that
24 when you have your opportunity after I get through
25 questioning. I want us to be as thorough as possible,
26 so if I leave something out, y'all go right to it, and
27 we will tend to it. But that's the specific reason I
28 am asking it is to make sure that they are not
29 requiring the defendant to have to prove anything.

Individual Voir Dire - REST OF JURY OUT

1 **BY MR. DE GRUY:** Your Honor, on an almost
2 unrelated point, based on Mr. Evans' questioning, it
3 is obvious that he has run NCIC's on some of these
4 jurors, perhaps all of these jurors. And we would ask
5 that the State give us NCIC's on all of these jurors.

6 **BY THE COURT:** I don't think the discovery rules
7 require that, do they?

8 **BY MR. EVANS:** No, sir. And I have gotten burned
9 once before, as this Court knows, and got reversed
10 because the defense knowingly left a felon on the
11 jury, and the Supreme Court says that the defense is
12 the one that is prejudiced. So we try to make sure
13 that there aren't any on there.

14 **BY THE COURT:** Well, the discovery is controlled
15 by the Uniform Rules of Circuit and County Court, and
16 to my knowledge, the disclosure of that information is
17 not required. Okay. Gloria Fielder.

18 (JUROR NO. 17, MS. GLORIA T. FIELDER, enters the
19 courtroom.)

20 INDIVIDUAL VOIR DIRE BY THE COURT:

21 Q. State your name, Ms. Fielder?

22 A. Gloria Leface Fielder.

23 Q. All right. Ms. Fielder, have you heard anything
24 about this case?

25 A. Yes, I have.

26 Q. How did you hear it?

27 A. I have heard it from the newspapers, from the
28 television, from my husband.

29 Q. Okay. And did your husband purport to know what

Individual Voir Dire - REST OF JURY OUT

1 went on, or was he just relating to you what gossip or street
2 talk was?

3 A. I guess he knew some of what went on.

4 Q. Okay. Based on what you have heard, did you form
5 an opinion as to the guilt or innocence of Mr. Flowers?

6 A. No, sir.

7 Q. If you were chosen to sit on this jury, could you
8 listen to the evidence from the witness stand, get my
9 instructions on the law, take my instructions on the law,
10 apply them to the evidence, and consult with your fellow
11 jurors, and then make a jury based on that--

12 A. --I would--

13 Q. -- make a decision based on that?

14 A. Yes, sir. I believe I could.

15 Q. Ms. Fielder, could you, considering what you have
16 heard about this case, could you be a fair and impartial
17 juror in this matter?

18 A. Yes, sir.

19 Q. Let me ask you first; I want to clear this up for
20 the record. Who is your husband?

21 A. Danny Fielder, Jr.

22 Q. Okay. Is he in law enforcement?

23 A. He is a witness.

24 Q. He is a witness in this case?

25 A. Yes, sir.

26 Q. Okay. He did some of the investigation in this
27 matter?

28 A. I'm not real sure. I know that he carried the
29 evidence to the crime lab in Jackson. Now what other, I

Individual Voir Dire - REST OF JURY OUT

1 don't know.

2 **BY THE COURT:** Okay. Mr. Evans.

3 INDIVIDUAL VOIR DIRE BY MR. EVANS:

4 Q. Ms. Fielder, what the Judge is going over and what
5 is so important, as we went over, the Judge went over this
6 morning, at this phase in this trial or any other trial, this
7 Defendant or any other defendant is presumed by law to be
8 innocent. That is because the burden of proving someone
9 guilty is on us, the State of Mississippi. And at this point
10 you have not heard any evidence in court. So basically, what
11 we are looking at at this point, since you have not heard any
12 evidence in court, can you presume at this point that he is
13 innocent until you hear evidence?

14 A. Yes, sir. I believe I can.

15 Q. And if the State proves to you beyond a reasonable
16 doubt that he is, in fact, guilty, then could you base a
17 decision on that evidence?

18 A. Yes, sir.

19 **BY MR. EVANS:** Now Your Honor, I don't think
20 there would be anything improper about this. Her
21 husband is only a chain witness on this. I don't
22 think he had anything to do with the case itself.
23 Just a transport.

24 **BY THE COURT:** I bet they are getting ready to
25 ask her that.

26 **BY MR. DE GRUY:** Yes, sir.

27 **BY MR. EVANS:** That's all we have, Your Honor.

28 **BY THE COURT:** Okay.

29 INDIVIDUAL VOIR DIRE BY MR. CARTER:

Individual Voir Dire - REST OF JURY OUT

1 Q. Ms. Fielder, when is the last time you had somebody
2 talk to you about this case?

3 A. When I got my summons to come for a juror, I have
4 to turn that paper in to where I work, and we discussed the
5 case at work.

6 Q. Okay, where do you work?

7 A. At the welfare office in Montgomery County.

8 Q. When you say, we discussed it, how many people are
9 you talking about?

10 A. Probably five or six.

11 Q. Did anybody out of that five people say Mr. Flowers
12 is innocent?

13 A. Nobody really said one way or the other.

14 Q. Okay. Now you said you heard something about this
15 case from your husband; is that correct?

16 A. Yes, sir.

17 Q. How many times has your husband talked to you about
18 this case? Do you have any idea?

19 A. Probably back when it first happened, we talked
20 about it. But not, not no, just when the summons came up, we
21 talked about it again but nothing, not--

22 Q. Is your husband the only police officer that you
23 have talked to you about the case?

24 A. Yes, sir.

25 Q. So you haven't talked to any other police officers
26 about this case?

27 A. No, sir. Now the Sheriff was my cousin, but I did
28 not, we didn't talk about the case.

29 Q. Okay. Has your husband formed an opinion about

Individual Voir Dire - REST OF JURY OUT

1 guilt or innocence of Mr. Flowers and stated it to you?

2 A. Yes, sir.

3 Q. Now you have no way of knowing whether statements
4 made to you from your husband were facts or not; is that
5 correct?

6 A. I have no way of knowing.

7 Q. But you do, in fact, assume they were facts?

8 A. Yes, sir.

9 Q. And based on what you have heard from your
10 husband -- did you also hear about it on TV? Did you see any
11 news accounts, TV accounts of it?

12 A. Yes, sir.

13 Q. Any newspaper accounts?

14 A. Yes, sir.

15 Q. Has there been any talk at your church about it?

16 A. Some of the people that were killed were members of
17 where I go to church.

18 Q. Who were they?

19 A. Ms. Tardy. I think that's the only one.

20 Q. Did you know Ms. Tardy well?

21 A. I know her family. I know who she was. I know her
22 family probably better than I knew her.

23 Q. Do you consider her family your friend?

24 A. Not particularly. No, sir.

25 Q. Based on everything that you heard and are you
26 telling us you haven't formed an opinion as to Mr. Flowers'
27 guilt or innocence?

28 A. I believe that I can listen to what goes on in this
29 courtroom and form my own opinion.

Individual Voir Dire - REST OF JURY OUT

1 Q. That's good. But what I want to know also is based
2 on what you have heard before you sit as a juror, have you
3 formed an opinion?

4 A. No, sir.

5 Q. Already?

6 A. No, sir.

7 Q. So is Mr. Flowers innocent?

8 BY MR. EVANS: Your Honor, that is not a proper
9 question.

10 BY THE COURT: That is not proper. You know
11 that.

12 BY THE JUROR:

13 A. I don't know--

14 BY THE COURT: -- Ma'am, you don't have to answer
15 that question. I sustained the objection.

16 BY MR. CARTER: One moment, Your Honor.

17 (Defense Counsel confer.)

18 BY MR. CARTER:

19 Q. Do you have an opinion of the death penalty, Ms.
20 Fielder?

21 A. I could vote for the death penalty, not just on
22 this case, on any case.

23 Q. You could vote for it, and what would be the
24 factors that determined whether you voted for it or not?

25 BY MR. EVANS: That is not proper either.

26 BY THE COURT: That is not either. That is not
27 proper. Sustained.

28 BY MR. CARTER: Your Honor, this lady said she
29 could vote for the--

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** -- That is just not a proper
2 question, and I'm not going to allow you to ask it.
3 You are asking her to make a commitment, and that is
4 improper.

5 **BY MR. CARTER:** I'm not asking her to make a
6 commitment.

7 **BY THE COURT:** Well, it's sustained. Move on.

8 BY MR. CARTER:

9 Q. One other question, Ms. Fielder. Is it your
10 opinion that the death penalty is warranted in every murder
11 case?

12 A. I would just have to listen to the evidence.

13 Q. So is that a yes or a no?

14 **BY MR. EVANS:** Your Honor, she has answered the
15 question.

16 **BY THE COURT:** And that is, that is not the
17 proper form for the reverse Witherspoon.

18 **BY MR. CARTER:** Your Honor, the answer is
19 ambiguous to me, and I'm just trying to get a
20 clarification.

21 **BY THE COURT:** The law is pretty clear on what
22 you can ask for reverse Witherspoon, and the form of
23 that question is not correct.

24 **BY MR. CARTER:** No further questions.

25 **BY THE COURT:** I will ask it.

26 BY THE COURT:

27 Q. And I have asked it before. Do you feel that
28 regardless of what -- if I gave, if you ever got to consider
29 the death penalty, that would mean that I said the law

Individual Voir Dire - REST OF JURY OUT

1 authorized it. That would be the only way you could consider
2 it. Regardless of what those facts were, would you impose
3 the death penalty simply because this man had been convicted
4 of this? Or would you listen to all the evidence of the
5 aggravating and mitigating circumstances, then consult with
6 your fellow jurors, look at my instructions on the law, and
7 then make your decisions?

8 A. I would listen to all your instructions, consult
9 with my fellow jurors, and then I would make my decision.

10 Q. Okay. What was your husband's position at the time
11 this occurred?

12 A. It was, either he was chief deputy or he was a
13 deputy. I'm not-- it was--

14 Q. -- For Sheriff Tompkins?

15 A. Right.

16 Q. Okay. You told me that he expressed to you his
17 opinion. Did the fact that your husband expressed his
18 opinion to you affect you to the point to where you can't
19 form your own opinion and cannot be fair and impartial?

20 A. No, sir.

21 BY THE COURT: Okay. In light of those
22 questions, do you have any further?

23 BY MR. EVANS: No, sir.

24 BY THE COURT: You may step down.

25 (Juror 17, Ms. Fielder, leaves the courtroom.)

26 BY THE COURT: Any objection to her for cause?

27 BY MR. EVANS: None from the State.

28 BY MR. DE GRUY: Yes, Your Honor. She is the
29 wife of a State's witness, and they have discussed the

Individual Voir Dire - REST OF JURY OUT

1 case. To the extent that Mr. Evans says he is merely
2 a chain of custody witness, he has clearly formed an
3 opinion and discussed it with her, and I don't think
4 she is a proper juror.

5 **BY MR. EVANS:** Your Honor, his involvement is so
6 minor that he has never even been used in this case
7 before. All he did was carry a shoe box to the crime
8 lab.

9 **BY THE COURT:** Ms. Fielder was so emphatic that
10 she could be fair and impartial and that this did not
11 require her to form an opinion. I'm not going to
12 excuse her for cause. She may be excused for
13 peremptory, but I'm not going to excuse her for cause.
14 Robert Johnson.

15 (JUROR NO. 19, MR. ROBERT KENT JOHNSON, enters the
16 courtroom.)

17 INDIVIDUAL VOIR DIRE BY THE COURT:

18 Q. Mr. Johnson, state your name, please.

19 A. Robert Kent Johnson.

20 Q. Mr. Johnson, have you heard anything about this
21 case?

22 A. Yes, sir.

23 Q. How did you hear it?

24 A. Off the news.

25 Q. Off the news?

26 A. The day it happened.

27 Q. Okay, have you heard anything about it since then?

28 A. Yes, sir.

29 Q. Is that off the news too?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir, off the news and just from other folks
2 talking.

3 Q. Was that street talk or gossip that you heard?

4 A. Yes, sir.

5 Q. Have you ever discussed this or had it discussed in
6 your presence by any member, any family member of anybody
7 involved in this matter?

8 A. No, sir.

9 Q. How about law enforcement? They ever discussed it
10 with you or in your presence?

11 A. No, sir.

12 Q. All right. Based on what you have heard, have you
13 formed an opinion as to the guilt or innocence of Mr.
14 Flowers?

15 A. Yes.

16 Q. Would it take sworn testimony to overcome that?

17 A. Yes, sir.

18 Q. Would the opinion that you have arrived at keep you
19 from being a fair and impartial juror in this case?

20 A. I don't think so but.

21 Q. You don't think so. What do you mean by don't
22 think so?

23 A. I mean I have got an opinion, but I think I can
24 still hear the evidence in a fair way.

25 Q. Okay. If you were chosen to sit on this jury,
26 could you make your decision based on the evidence that you
27 hear from the witness stand, the law that I give you at the
28 end of the case, and after consultation with your fellow
29 jurors, then make a decision regardless of what this opinion

Individual Voir Dire - REST OF JURY OUT

1 you had beforehand?

2 A. Yes, sir.

3 Q. Okay.

4 INDIVIDUAL VOIR DIRE BY MR. EVANS:

5 Q. How are you doing, Mr. Johnson?

6 A. Hey.

7 Q. Just a few questions. To start with, as the Judge
8 went over with you this morning, at this phase in this trial
9 or in any trial, this Defendant sitting over here or any
10 other defendant is by law presumed to be innocent, and that
11 is because the burden of proof is on the State of Mississippi
12 to prove to you if you are picked as a juror that he is, in
13 fact, guilty. That is why it is important that if you have
14 any opinion or have heard anything in the news or anything,
15 that you are able to disregard that. So my question is this.
16 Since at this point he is presumed innocent until we have
17 proven his guilt to you beyond a reasonable doubt, can you
18 disregard anything that you have heard, base your decision
19 strictly on what you hear in court, and only convict him if
20 the State of Mississippi proves to you beyond a reasonable
21 doubt that he is, in fact, guilty?

22 A. Yes, sir.

23 Q. Is there any reason that you could not do that?

24 A. No, sir.

25 BY MR. EVANS: That's all, Your Honor.

26 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

27 Q. Mr. Johnson, I am just a little bit confused. When
28 the Judge first asked you the question whether you formed an
29 opinion, you said yes?

Individual Voir Dire - REST OF JURY OUT

1 A. That's right.

2 Q. And then, he then asked you if it would take
3 evidence to change your opinion?

4 A. (Witness nods his head.)

5 Q. And now so you are telling us that that opinion is
6 that he is innocent?

7 BY MR. EVANS: Your Honor, I object. What the
8 opinion is is not proper at this point, I don't think
9 for any juror.

10 BY MR. DE GRUY:

11 Q. Mr. Johnson, perhaps you understand--

12 BY MR. EVANS: -- May the Court rule first.

13 BY THE COURT: I sustain it as to the form of
14 that question.

15 BY MR. DE GRUY:

16 Q. Mr. Johnson, the confusion I have is that you have
17 told Mr. Evans that you can presume him innocent?

18 A. (Witness nods his head.)

19 Q. Yet, in fact, you are telling us you have formed an
20 opinion, and it would take evidence to change your mind?

21 A. Right.

22 Q. And you are saying that is correct?

23 A. Yes, sir.

24 Q. And so my question is are those two things
25 inconsistent?

26 A. Well, all I can say is I have an opinion, but I
27 think I can hear the evidence in a fair way.

28 Q. And are you telling us that it is possible that
29 Mr. Flowers could put on some evidence to change your

Individual Voir Dire - REST OF JURY OUT

1 opinion?

2 A. Yes.

3 Q. Okay, and so when you say that you can presume him
4 innocent, what you're telling us is that you're willing to
5 give him a chance to prove that he is innocent?

6 A. Right.

7 Q. Now you didn't -- we had some questions about the
8 death penalty earlier, and I'm not asking you for your
9 opinion. Well, I guess that would be -- have you formed an
10 opinion as to the appropriate sentence in this case?

11 A. No.

12 Q. Then you heard some of the answers from your fellow
13 jurors this morning. There are a lot of people who feel this
14 way. You are in a murder case; someone is convicted of
15 murder; do you think that the death penalty is the only
16 appropriate punishment?

17 A. Uh-uh. No. No, sir.

18 Q. You are willing to consider other?

19 A. Right.

20 Q. And the Judge has given you a little bit about this
21 case in that the allegation is that there was a robbery and
22 murder, and so do you think in that circumstance that the
23 only appropriate punishment would be the death penalty?

24 A. Say that one more time.

25 Q. Are you saying that -- I'm saying in order to find
26 someone guilty of capital murder in Mississippi, not
27 particularly this case, any case, you have to find what is
28 called an underlying felony -- in this case robbery. If you
29 found someone guilty of murder during the commission of a

Individual Voir Dire - REST OF JURY OUT

1 robbery, do you think at that point there is no reason to
2 hear any more evidence? You would have made up your mind
3 that the death penalty is the appropriate punishment?

4 A. Probably yes.

5 Q. That in any robbery murder, not just murder, but
6 any robbery murder that the death penalty would be the only
7 appropriate punishment?

8 A. Yes.

9 BY MR. DE GRUY: I have nothing further of this
10 witness.

11 BY THE COURT: Let me ask you one question one
12 other way.

13 FURTHER VOIR DIRE BY THE COURT:

14 Q. You understand while ago I instructed, I told you
15 that I would give an instruction where, that the defendant is
16 presumed innocent until such time as the State proves his
17 guilt beyond a reasonable doubt. You understood that, didn't
18 you?

19 A. Yes, sir.

20 Q. All right. Let's say at the end, and I will also
21 give you an instruction that if he didn't testify, that he
22 had a right not to, and you couldn't hold that fact against
23 him. Do you understand that?

24 A. Yes.

25 Q. Well, let's say at the end of the State's case that
26 that took place, that's the defendant elected to put on no
27 evidence whatsoever. Would you hold that against him and
28 would your opinion then take over rather than what the facts
29 were in this case?

Individual Voir Dire - REST OF JURY OUT

1 A. I think I could go with the facts as they were
2 presented.

3 Q. So if he decided not to put on any evidence at all,
4 would you hold that against him?

5 A. No, sir. I wouldn't hold it against him.

6 Q. Okay.

7 **BY THE COURT:** Okay. Any other questions?

8 **BY MR. EVANS:** No, sir.

9 **BY MR. DE GRUY:** Yes, Your Honor. I have just a
10 follow up.

11 FURTHER VOIR DIRE BY MR. DE GRUY:

12 Q. Again Mr. Johnson, I thought what you had told the
13 Court originally and what you told me was that you had an
14 opinion, and it would require evidence from Mr. Flowers to
15 change your opinion?

16 A. Well, I mean I have an opinion, but I think I can
17 still hear the evidence and be fair about the evidence and
18 everything that would be presented to me.

19 Q. Are you changing your prior answer that it would
20 require evidence from Mr. Flowers to change your opinion? Is
21 that still what you are saying?

22 A. Say that one more time now.

23 Q. Are you saying that because of your, the opinion
24 you formed based on people you talked to, that it would
25 require Mr. Flowers to present evidence to change your
26 opinion?

27 A. Yes.

28 **BY THE COURT:** Okay.

29 **BY MR. EVANS:** Your Honor, I think it is

Individual Voir Dire - REST OF JURY OUT

1 confusing on what evidence we are talking about,
2 evidence from the witness stand or evidence that one
3 side would have to put on.

4 **BY THE COURT:** Okay. You may step down.

5 (Juror 19, Mr. Johnson, leaves the courtroom.)

6 **BY THE COURT:** Okay. I assume y'all have no
7 objection to cause?

8 **BY MR. EVANS:** No, sir.

9 **BY THE COURT:** I mean you don't want him excused
10 for cause.

11 **BY MR. EVANS:** No, sir.

12 **BY MR. DE GRUY:** We move for cause on two
13 grounds. First, he is clearly, he has stated clearly,
14 although not consistently, that he would require
15 evidence to change his opinion. He is not proper for
16 that reason, and he is clearly in any robbery murder
17 case going to vote for the death penalty and only the
18 death penalty. And under Morgan v. Illinois, he is
19 not a proper juror.

20 **BY THE COURT:** I'm going to excuse him for cause.
21 Timothy James.

22 (JUROR NO. 23, MR. TIMOTHY RAY JAMES, enters the
23 courtroom.

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. State your name, please, sir.

26 A. Timothy James.

27 Q. Mr. James, you were, I believe, editor of the local
28 newspaper when this occurred; is that correct?

29 A. I was.

Individual Voir Dire - REST OF JURY OUT

1 Q. All right, so you obviously know something about
2 the case?

3 A. I'm sorry; I wasn't when it occurred. I came two
4 weeks after it occurred.

5 Q. Okay, so you have known about it since almost when
6 it happened?

7 A. About the trials, yes, sir.

8 Q. Did you do any investigation yourself as a result
9 of that?

10 A. Some.

11 Q. Okay. Did you talk to law enforcement and family
12 members?

13 A. I did.

14 Q. Based on what you heard or learned during that
15 time, Mr. James, did you form an opinion as to the guilt or
16 innocence of Mr. Flowers?

17 A. Yes, sir. I did.

18 Q. All right. Do you feel that that would keep you
19 from being a fair and impartial juror in this case?

20 A. I feel that it would.

21 Q. All right.

22 BY MR. EVANS: No questions, Your Honor.

23 BY MR. DE GRUY: No questions.

24 BY THE COURT: Thank you, sir. You can step
25 down.

26 (Juror 23, Mr. James, leaves the courtroom.)

27 BY THE COURT: Emily Byars.

28 BY MS. FERRARO: Was that a cause strike?

29 BY MR. DE GRUY: Yes.

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** I'm sorry; what?

2 **BY MS. FERRARO:** Was that a cause strike?

3 **BY THE COURT:** Oh, yeah. It gets to be a long
4 day after a while.

5 (JUROR NO. 24, MS. EMILY JEAN BYARS, enters the
6 courtroom.)

7 INDIVIDUAL VOIR DIRE BY THE COURT:

8 Q. State your name, please.

9 A. Emily Jean Byars.

10 Q. Ms. Byars, do you know anything about this case?

11 A. No.

12 Q. Have you heard about it?

13 A. Only that there were four murders.

14 Q. How did you hear that?

15 A. Just people in town talking.

16 Q. Did you hear it from anybody within the family of
17 anybody involved in this case?

18 A. No, I did not live here at the time.

19 Q. Okay. Have you read about it in the newspaper or
20 seen it on television?

21 A. No.

22 Q. Have you formed any opinion as to the guilt or
23 innocence of Mr. Flowers in this case?

24 A. No.

25 Q. If you were chosen to sit on this jury, could you
26 make your decision on the evidence that you hear from the
27 witness stand, the law that I give you at the end of the
28 case, and after consultation with your fellow jurors, then
29 make a decision?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes.

2 Q. Do you know of any reason that you could not be a
3 fair and impartial juror in this case?

4 A. No.

5 **BY THE COURT:** Mr. Evans.

6 INDIVIDUAL VOIR DIRE BY MR. EVANS:

7 Q. How are you doing, Ms. Byars?

8 A. Fine. How are you?

9 Q. All right. We have kind of gone over earlier
10 today; at this phase in this trial or any trial this
11 Defendant or any other defendant is automatically presumed
12 innocent. The reason for that is the burden of proof to
13 prove to the jury that he is guilty is on the State of
14 Mississippi. We must put on proof in open court to convince
15 the jury that he is guilty beyond a reasonable doubt. You
16 understand that?

17 A. Yes, sir.

18 Q. And at this point because we have put on no proof,
19 he is automatically presumed innocent. You don't have any
20 problem with that theory of law, do you?

21 A. No, sir.

22 Q. On the contrast of that, once we have proven to the
23 jury beyond a reasonable doubt that he is guilty, that
24 presumption is no longer there to protect him. You
25 understand that?

26 A. Yes, sir.

27 Q. Now based on what we very gone over here today, are
28 you telling us that you could base your decision strictly on
29 what you hear in court and return a verdict of guilty or

Individual Voir Dire - REST OF JURY OUT

1 innocent based strictly on that?

2 A. Yes, sir.

3 Q. And I think from your questionnaire and questioning
4 earlier this morning, you do not have any religious or
5 philosophical beliefs that would prohibit you from
6 considering the death penalty as one of the possible
7 punishments; is that correct?

8 A. No, sir.

9 Q. And on the contrast of that, is there anything that
10 would make you automatically vote the death penalty
11 regardless of what the facts are, or would you consider the
12 facts and determine whether it was an appropriate case?

13 A. I would consider the facts.

14 BY MR. EVANS: That's all we have, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

16 Q. Ms. Byars, your husband is a part time deputy?

17 A. That's correct.

18 Q. And he is not, he is in Carroll County now?

19 A. That's correct.

20 Q. But he had previously worked in Montgomery County?

21 A. About two months. Let me see. Probably, maybe
22 August of ninety-- no. August of 2000 to October of 2000, I
23 believe. And then he went to Carroll County, and he works
24 just whenever is needed there.

25 Q. What is his role at the sheriff's department?

26 A. He works as a deputy when needed or dispatcher when
27 needed.

28 Q. Have you ever had any discussions about, even since
29 you received the subpoena on this case or at any time,

Individual Voir Dire - REST OF JURY OUT

1 discussions with him about this case?

2 A. No, sir.

3 Q. On your questionnaire you said you had served on a
4 jury before. It involved a Leflore County supervisor's race?

5 A. Correct.

6 Q. Was that a Leflore County jury?

7 A. It was Leflore County. I lived there at the time.

8 Q. What -- you ordered a new race?

9 A. They ordered a new race; yes, sir.

10 Q. As a juror, did y'all make that decision?

11 A. It was a supervisor's district and it was contested
12 as to the votes, and it actually turned out that a lot of
13 people who voted were not even alive or did not live in that
14 county. So we were either given the option to continue the
15 vote or election as it occurred or either order for a new
16 race, so we ordered for a new race.

17 Q. And obviously, you thought that was the fair?

18 A. When you have dead people voting, yes, sir.

19 Q. I'm from Louisiana. I didn't know you couldn't do
20 that.

21 **BY THE COURT:** I always vote down there, don't
22 you, Mr. de Gruy?

23 BY MR. DE GRUY:

24 Q. Now I just have a couple of questions on your, to
25 follow up on Mr. Evans concerning your opinion on the death
26 penalty. Now every murder case in Mississippi is not a death
27 penalty case. Do you-- you are nodding your head?

28 A. Yes, sir. I understand that; yes, sir.

29 Q. Okay. Now in order for someone to be convicted of

Individual Voir Dire - REST OF JURY OUT

1 capital murder, it requires an additional factor such as, and
2 we are not talking necessarily of just this case and your
3 opinions on this case because we know you haven't heard any
4 evidence yet. But in general, a robbery, a murder that
5 occurs or a killing that occurs during a robbery is a death
6 penalty eligible case in Mississippi. Do you understand
7 that?

8 A. Yes, sir.

9 Q. In your opinion if a person is found guilty beyond
10 a reasonable doubt; there is no self-defense, no insanity,
11 beyond a reasonable doubt that there was a killing during the
12 commission of a robbery, is that, do you believe that that
13 would automatically be a death penalty?

14 A. I'm sorry; repeat that.

15 Q. Do you believe that the appropriate punishment in a
16 robbery homicide case should be the death penalty?

17 A. No, sir.

18 **BY MR. EVANS:** Your Honor, I don't think that is
19 a proper way of asking that question.

20 **BY THE COURT:** It's not. It's misleading to her
21 as to what she is going to be presented with. In any
22 case in which the death penalty is concerned, there
23 are going to be aggravating circumstances and
24 mitigating circumstances presented. And the question
25 is whether she will consider all those. And you
26 certainly have a right to ask her whether considering
27 all those, she would automatically then disregard them
28 and impose the death penalty, but it has got to be
29 asked in that form.

Individual Voir Dire - REST OF JURY OUT

BY MR. DE GRUY:

Q. Well, we will talk about considering mitigating circumstances. Now nobody can tell you exactly what a mitigating circumstance is. It could be anything from a person's background. It's not necessarily related to the individual case. Do you believe that if you have found the person guilty of a killing during a robbery, would you be able to consider other factors that may be unrelated to the crime in determining whether or not a person should get life in prison or the death penalty?

A. I do believe you need to consider all factors, and you need to consider the options put before you.

Q. So you are assuring us that you would listen to not only the evidence at the first phase of the trial to decide whether or not someone is guilty; you would still have an open mind in deciding, knowing the person was guilty to your satisfaction, you would still have an open mind in determining what the appropriate sentence was?

A. If I understand correctly, it's a two part trial. The first part is to decide whether or not he is guilty. The second part is to decide then punishment to be given.

Q. And you are telling us that you could do that with an open mind in both phases?

A. Yes.

BY MR. DE GRUY: Thank you. That's all we have,
Your Honor.

BY THE COURT: You may step down.

(Juror 24, Ms. Byars, leaves the courtroom.)

BY THE COURT: Any objection to her for cause?

Individual Voir Dire - REST OF JURY OUT

1 BY MR. EVANS: No, sir.

2 BY MR. DE GRUY: No, Your Honor.

3 BY THE COURT: I think the Court Reporter could
4 go on, but the Judge can't. We are going to take a
5 short break.

6 (FOLLOWING AN AFTERNOON RECESS ON FEBRUARY 2, 2004,
7 INDIVIDUAL VOIR DIRE CONTINUED IN OPEN COURT WITH ALL COUNSEL
8 AND THE DEFENDANT PRESENT AS FOLLOWS:)

9 BY THE COURT: I need Lester Sawyer. No jurors
10 are in here, are there?

11 BY A BAILIFF: No jurors.

12 BY BAILIFF BROWNING: You skipped number 25, Mr.
13 Hamer.

14 BY THE COURT: I'm sorry. I'm sorry.

15 BY BAILIFF BROWNING: Holly, Mr. Hamer, number
16 25.

17 (JUROR NO. 25, MR. WILLIE LEE HAMER, JR., enters
18 the courtroom.)

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. State your name, please, sir.

21 A. Willie Hamer.

22 Q. Mr. Hamer, have you heard anything about this case?

23 A. Uh, somewhere.

24 Q. Somewhere? Was it street talk or gossip or
25 anything like that, or was it from somebody that was in the
26 family or something?

27 A. Just street talk.

28 Q. Okay. Do you know Mr. Flowers or his family?

29 A. Yeah.

Individual Voir Dire - REST OF JURY OUT

1 Q. All right. Are you friends with them?

2 A. No.

3 Q. All right. Did you hear anything about it from
4 them?

5 A. No.

6 Q. Okay. Did you see it on the newspaper, I mean read
7 it in the newspaper?

8 A. Yeah.

9 Q. Did you hear it on the radio?

10 A. Yes, sir.

11 Q. Did you see it on television?

12 A. No, sir.

13 Q. Okay. Based on what you heard and you read, did
14 you form any opinion as to the guilt or innocence of Mr.
15 Flowers?

16 A. Somewhat.

17 Q. Okay. Would that opinion that you have formed keep
18 you from being fair and impartial?

19 A. No.

20 Q. Okay. Could you sit over there and if you were
21 selected to sit over there in the jury, listen to the
22 evidence that comes from the witness stand, get my
23 instructions on the law and apply that to the evidence that
24 you hear, talk to your fellow jurors and then come up with a
25 decision based on that to the exclusion of what your opinion
26 was?

27 A. Yeah.

28 Q. You think you could be fair and impartial to both
29 sides?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir.

2 Q. All right.

3 BY THE COURT: Mr. Evans.

4 BY MR. EVANS: Thank you, Your Honor.

5 INDIVIDUAL VOIR DIRE BY MR. EVANS:

6 Q. Mr. Hamer, how do you know the Defendant?

7 A. Just around.

8 Q. Did y'all go to school together?

9 A. No, sir.

10 Q. Run together?

11 A. No, just by in the streets.

12 Q. All right, what about in the streets? How would
13 you have contact?

14 A. Just friends, just know him, you know, not actually
15 friends, just meet him in the street, something like that.

16 Q. Just meet him in the streets?

17 A. Yeah.

18 Q. How about his family?

19 A. No.

20 Q. You said while ago you knew them. What family
21 members do you know?

22 A. I know, I know, know the family but I don't know
23 them, know them.

24 Q. All right, which ones of them do you know?

25 A. I know him and his sister.

26 Q. Which sister?

27 A. Priscilla.

28 Q. How do you know Priscilla?

29 A. Friends.

Individual Voir Dire - REST OF JURY OUT

1 Q. How long have y'all been friends?

2 A. A long time.

3 Q. Ten years, twenty years?

4 A. Something like that. Ten.

5 Q. And how do you know her?

6 A. Just by meeting in the street.

7 Q. Okay. Where did you grow up? What neighborhood?

8 A. Poor House Road.

9 Q. Okay, and some of his relatives live on Poor House
10 Road too, don't they?

11 A. Not that I know of.

12 Q. You don't know any of the Campbells or any of those
13 out there?

14 A. Campbell? I don't know.

15 Q. Mr. Hamer, have you been arrested recently on a
16 drug charge?

17 A. No, sir.

18 Q. You haven't?

19 A. (Mr. Hamer shakes his head.)

20 Q. How about domestic violence charges?

21 A. Yes, sir.

22 Q. Two times?

23 A. Well, yes.

24 Q. When were those?

25 A. Last year.

26 Q. Who arrested you on them; do you remember?

27 A. (Mr. Hamer shakes his head.)

28 Q. Sheriff's department or police department?

29 A. I think it was the Sheriff's department.

Individual Voir Dire - REST OF JURY OUT

1 Q. Did you work at P and L?

2 A. Yes, sir.

3 Q. Okay, was the police department or Sheriff's
4 department one investigating your working down there?

5 A. The Sheriff.

6 Q. Sheriff's department was?

7 A. (Mr. Hamer nods his head.)

8 Q. Did it have to do with drugs?

9 A. With what?

10 Q. Did it have to do with drugs?

11 A. No, sir.

12 Q. What have you heard about this case?

13 A. I ain't heard nothing.

14 Q. Are you saying you haven't heard anything about the
15 case?

16 A. No more than after everything went on that day.
17 Other than that.

18 Q. All right, what did you hear about what went on
19 that day?

20 A. All I heard was somebody got killed down at the
21 furniture store.

22 Q. Who did you hear that from?

23 A. The news, the peoples around, you know.

24 Q. Okay. Did you ever talk to the Defendant about it?

25 A. No, sir.

26 Q. How about his sister?

27 A. No, sir.

28 Q. Any other family members?

29 A. No, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Now I'm not sure about what you said this morning.
2 What was your answer about your opinions on the death penalty
3 this morning?

4 A. I couldn't see it.

5 Q. I'm sorry; I can't understand you?

6 A. I can't do it.

7 Q. You just don't believe in the death penalty?

8 A. No, sir.

9 Q. Is that based on religious or personal reasons?

10 A. Just personal.

11 Q. Is that personal belief of yours such that you just
12 don't think the death penalty is an appropriate punishment?

13 A. No.

14 Q. And based on that, if you were picked as a juror in
15 this case and the Judge told you that the law authorized the
16 death penalty in this case and if the facts in this case
17 justified it, are you telling us that you still could not
18 consider the death penalty as a possible punishment?

19 A. I don't.

20 Q. You need to answer up so she can write it down.

21 A. I think so. I think I could.

22 Q. Okay, well, what makes you change your mind now?

23 A. I don't know. Just like you said, I get to listen
24 to everything. I can decide on my own, you know.

25 Q. All right. Are you saying that your opinion on the
26 death penalty has changed since you have been sitting in
27 here?

28 A. Yes.

29 Q. So now you believe in the death penalty?

Individual Voir Dire - REST OF JURY OUT

1 A. No, I don't believe in the death penalty.

2 Q. Okay. Then if you don't believe in the death
3 penalty, how could you vote for the death penalty in any
4 case?

5 A. I couldn't.

6 Q. You couldn't?

7 A. (Mr. Hamer shakes his head.) But you know, just by
8 me listening to the case, you know, I, you know, like I said,
9 no matter what I say, you know, or what was said, I probably
10 could give you a straight answer on it, you know.

11 **BY THE COURT:** You need to put the question in
12 the direct context of Witherspoon.

13 BY MR. EVANS:

14 Q. If you were picked as a juror in this case and the
15 Judge told you that the facts of this case justified the
16 death penalty, that the law did, and you found that the facts
17 justified the death penalty, could you vote for the death
18 penalty?

19 A. (Mr. Hamer shakes his head.)

20 Q. You are shaking your head no. Is that your answer?

21 A. Yeah. I'm positive.

22 **BY MR. EVANS:** Nothing further, Your Honor.

23 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

24 Q. Just a couple of questions. Mr. Hamer, do you
25 recall filling out the juror questionnaire, five page
26 questionnaire?

27 A. Yes, sir.

28 Q. The last question on that questionnaire was Do you
29 have any personal or religious belief that would prevent you

Individual Voir Dire - REST OF JURY OUT

1 from voting to impose the death penalty if the facts
2 justified it. And you said no.

3 A. Yeah.

4 Q. Is that how you felt at that time?

5 A. At that time I did, yeah.

6 Q. Now I think that the question may have been
7 confusing. We are not asking you to make a decision on this
8 case right now.

9 A. Okay.

10 Q. Because you haven't heard any evidence.

11 A. That's right.

12 Q. The question is in any capital murder case, after
13 you have heard all of the evidence and the Judge tells you
14 this is, under the law this is the kind of case that you can
15 consider two punishments, either life without parole or the
16 death penalty. It is going to be your choice. You just
17 follow the rules of law that you make that choice. He is not
18 going to tell you to vote one way or the other. You
19 understand?

20 A. Right. Yeah.

21 Q. Is there a case, not this case, any case in which
22 you believe you could serve on that kind of jury, hear the
23 evidence and make the decision, life in prison or the death
24 penalty?

25 A. Yeah.

26 **BY MR. EVANS:** I don't think that is a proper
27 form of the question, Your Honor.

28 **BY THE COURT:** I think you are adding something
29 to it that distorts the question like the life part of

Individual Voir Dire - REST OF JURY OUT

1 it.

2 **BY MR. DE GRUY:** That is the law, Your Honor.
3 That is the only question they have.

4 **BY THE COURT:** Oh, I know that. But the question
5 is not whether or not he can impose life. It's
6 whether or not he can impose death.

7 **BY MR. DE GRUY:** With all due respect, Your
8 Honor, he has to be able to consider both. Every
9 juror has to be able to consider both.

10 **BY THE COURT:** I don't think that is exactly the
11 way you asked it.

12 BY MR. DE GRUY:

13 Q. I will try again, Mr. Hamer.

14 A. All right.

15 Q. See, we are all confused. If you were selected to
16 serve as a juror in a capital murder case and you and the
17 other eleven jurors found him guilty beyond a reasonable
18 doubt, then we would have a second part of a trial. Do you
19 understand that?

20 A. Uh-hum.

21 Q. In that second part there would be additional
22 evidence introduced, and at the end the Judge would give you
23 the law to follow, and you would have to make a decision.
24 The question is would you be able to consider--

25 A. Yes, sir.

26 Q. --both alternatives?

27 A. Both. I would be able to consider both.

28 Q. I'm not asking you to make a decision now, but just
29 after hearing the evidence, you could--

Individual Voir Dire - REST OF JURY OUT

1 A. -- yeah.

2 Q. --consider both options?

3 A. Yes, sir.

4 Q. And that's the same thing you said in your
5 questionnaire pretrial?

6 A. Yes, sir.

7 **BY MR. DE GRUY:** That's all I have, Your Honor.

8 **BY THE COURT:** Okay. Let me ask it this way.

9 **BY THE COURT:**

10 Q. If I instructed you that the law allowed you, under
11 the law you were authorized to impose the death penalty and
12 after you heard the facts, you found that the facts warranted
13 it, could you impose the death penalty?

14 A. Yes. I could do it.

15 **BY THE COURT:** All right. Any other questions?

16 **BY MR. EVANS:** No, sir.

17 **BY THE COURT:** You may step down.

18 (Juror 25, Mr. Hamer, leaves the courtroom.)

19 **BY THE COURT:** Any objection for cause?

20 **BY MR. EVANS:** Yes, Your Honor. The State would
21 ask that he be struck for cause because several times
22 he said he could not vote for the death penalty under
23 any circumstance.

24 **BY MR. DE GRUY:** Your Honor, I think the question
25 from the District Attorney was confusing in that he
26 was emphasizing this case, and that is not the proper
27 standard. It is whether or not under the law they
28 would be able to consider the death penalty after they
29 have heard the evidence. And he clearly on his

Individual Voir Dire - REST OF JURY OUT

1 questionnaire when he filled it out, said he had no
2 scruples. He obviously had some problems with the
3 death penalty, but he could clearly set those aside
4 and said unequivocally he would set them aside and
5 consider both options.

6 **BY THE COURT:** When he answered my question,
7 which is the direct Witherspoon question, he answered
8 that he could do it. So I will not strike him for
9 cause. Lester Sawyer.

10 (JUROR NO. 26, MR. LESTER SAWYER, enters the
11 courtroom.)

12 **BY THE COURT:** Right there, Mr. Sawyer.

13 INDIVIDUAL VOIR DIRE BY THE COURT.

14 Q. Would you state your name.

15 A. Lester Sawyer.

16 Q. Mr. Sawyer, have you heard anything about this
17 case?

18 A. No, sir. When they had the trial before, it wasn't
19 in town, I don't think.

20 Q. I can't hear you. You need to turn around and talk
21 to me. I can't hear you.

22 A. When they had the case before, when he was on trial
23 before, I don't think it was in the county, was it?

24 Q. Well, you knew he got tried before, don't you?

25 A. Well, I didn't know nothing about it. I didn't
26 have no--

27 Q. --Well, you just told me you did. You just told me
28 you knew about it.

29 A. I didn't know about the trial, but I knew about

Individual Voir Dire - REST OF JURY OUT

1 when it happened, when they had, when they had the accident.

2 Q. How did you know about that?

3 A. Well, I live in Montgomery County.

4 Q. Okay. So you heard it on gossip and street talk?

5 A. No, it was on the radio and TV's, and that's the
6 only thing I knew about it was what I heard on TV and radio,
7 and the paper had carried a lot of it.

8 Q. Okay, so you have heard it from a bunch of
9 different sources; right?

10 A. Not no individuals, but I just heard it on the
11 news. Like I said, radio and TV and the paper.

12 Q. Did you form any opinion about the guilt or
13 innocence of Mr. Flowers based on what you heard or read?

14 A. No, sir. I didn't. I never gave it a thought if
15 you want to know the truth about it. I never gave that--

16 Q. Do you know him?

17 A. No, sir. See, I live, I moved back here from Fort
18 Worth, Texas.

19 Q. Okay, when did you move back?

20 A. I have been back here for 23 -- my oldest daughter,
21 she was five, almost six when I moved back. Now she is 30
22 years old, so I have been back here about 24 years.

23 Q. Okay.

24 A. In and out because I didn't stay here all--

25 Q. -- But you don't know him or his family; is that
26 right?

27 A. No, sir. When I left here, I knew everybody. I
28 left in '59. I am 62 years old. I will be 62 April 5th.
29 When I left here, I knowed everybody here like all the small

Individual Voir Dire - REST OF JURY OUT

1 towns like Duck Hill and Kilmichael. I went to school at
2 Kilmichael, but it wasn't--

3 Q. Where do you live now?

4 A. I live out there near Lodi and Spring Hill. When
5 I went to school at Kilmichael, it wasn't -- the grammar
6 school was where the high school is. We moved the school
7 down here, and the white and black didn't go to school
8 together then.

9 Q. Well, let me ask you this, Mr. Sawyer. Based on
10 what you heard, did you -- and I may have asked you this
11 already. Did you form an opinion as to the guilt or
12 innocence--

13 A. --Like I said, I hear so much killing and stuff on
14 the news and stuff on the news, I never -- if it ain't, if it
15 ain't something in my family, I never give it a thought. I
16 guess something which happened to my family, like since I say
17 I have been back about 24 or 25 years, so I haven't never had
18 no more family death. That's about all, you know, like.

19 Q. Well, let me ask you this, Mr. Sawyer. If you were
20 selected on this jury and you were sitting over there in the
21 jury box, could you make your decision based on the evidence
22 that you have heard, that you hear in court, the law that I
23 give you at the end of the case and after talking with your
24 fellow jurors, make your decision based on that?

25 A. Well, that is the only choice I would have.

26 Q. All right, sir.

27 **BY THE COURT:** Mr. Evans.

28 INDIVIDUAL VOIR DIRE BY MR. EVANS:

29 Q. How are you doing, Mr. Sawyer?

Individual Voir Dire - REST OF JURY OUT

1 A. Okay.

2 Q. Mr. Sawyer, you say when you left here, you knew
3 everybody in the county; is that right?

4 A. Well, when I left here, I was about 17, and like I
5 said, April 5th I will be 62. And like I said, it was a
6 small town. We were picking cotton and the largest job. The
7 largest job you could get that I knew down here would be
8 picking cotton or something like that. Even the nursing
9 home, they didn't have -- I didn't know no one to work on no
10 stores or no -- they didn't have no shopping centers or stuff
11 like that. It was small, people owned them small stores.
12 They didn't have too many people working at it.

13 Q. The Defendant's fathers name is Archie Flowers.
14 Did you know him?

15 A. Like I said, I never -- no, sir. The people that I
16 knew when I left here, white and black, they mostly is
17 passed. All the kids that growed up with me, they left here
18 and went to California and New York. They just left and went
19 everywhere.

20 Q. And you have been back here--

21 A. -- So I am down here, since I have been back, like
22 I am in town out there with them peoples out there; I don't,
23 it's just like I'm standing in Texas or Chicago or New York
24 or somewhere. I don't know nobody. I ain't saw nobody out
25 there that I could know their name, not naire a person, a
26 single person out there that I know their name.

27 Q. After 25 years, you don't know anybody?

28 A. Well, I left here when I was 17. When I moved back
29 here, that ain't been -- I am 62. I have been back here

Individual Voir Dire - REST OF JURY OUT

1 about, (inaudible) shoot, five years. Yes, sir. I have been
2 back about 25 years.

3 Q. And you don't know anybody in the county?

4 A. And my wife, my wife, she like, the kids and school
5 and stuff, she went to school on them nights. She had to go
6 out there, you know, if something was wrong or something.
7 And during the time they went to the health department and
8 stuff, my wife took them all the time. I never did meet the
9 peoples. I never did. I don't remember carrying the kids
10 even to the clinic.

11 Q. All right, Mr. Sawyer, you have had several run-ins
12 with law enforcement, haven't you?

13 A. Well, just disorderly conduct. His cousin, now I
14 know one of his cousins. He still here when I was living
15 down here.

16 Q. Who was that?

17 A. Emma Flowers. And that's the only somebody I ever
18 had into it. He, he like, he had his own ideas about
19 everything.

20 Q. Have you been charged with making threatening phone
21 calls and placing bomb threats to different places?

22 A. I don't placed none. No, sir. I ain't made no
23 threatening calls or nothing.

24 Q. You haven't ever called the Sheriff's department or
25 police department and made any--

26 A. --I have called and asked them to come out--

27 BY MR. CARTER: --Your Honor, I object--

28 BY A JUROR: --for stealing and stuff like that.

29 BY MR. CARTER: --to all that unless there is

Individual Voir Dire - REST OF JURY OUT

1 some kind proof of it.

2 **BY THE COURT:** Well.

3 BY THE JUROR:

4 A. They were stealing stuff, and I have had them come
5 out, tell me he was stealing. He was telling me the only
6 thing I could do about that, I had to catch them and press
7 charges.

8 Q. Okay. Any of those times that you have had any
9 problems with the law that you held it against them?

10 A. Onliest something I had with the law was like I
11 said, was he is the Defendant's cousin. He is a Flowers; now
12 I am pretty sure, he was Emma Flowers -- that was his, they
13 are first cousins. So she said in court, I remember when she
14 said that, that the ones on court was her cousins, so she
15 would have to be his cousin too.

16 Q. All right, how did you know her?

17 A. Well, she lived, like I said, in Chicago, and she
18 lived out in Illinois and stuff.

19 Q. How close of friends are you with her?

20 A. I don't know that much about her. She moved back
21 here since I moved back here, and she live up at Spring Hill,
22 and I live near Lodi, and we never -- today is the first time
23 I saw her. This is about the second time I saw her since she
24 has been back. She hasn't been back as long as I have.

25 Q. All right. And you have only been back about 25
26 years?

27 A. I have been back here 25 years. My oldest
28 daughter, she was about five. She started to school down
29 here. She didn't, this is the only school she went to. She

Individual Voir Dire - REST OF JURY OUT

1 graduated at Mississippi State, and she is going back for a
2 master's degree. My son graduated. He is 29. He graduated
3 from Mississippi Valley State, and he went to the Nissan
4 school, and he is working at Nissan school now-- I mean he is
5 working at Nissan company in Canton, and they started him off
6 at \$23.00 an hour. All of them went to college since I have
7 been back. I have got the pictures to show in my pocket, and
8 they all went to college. I put them through college since I
9 have been back. Like I said, my wife worked in Minor Nursing
10 Home. She fell dead October the 3rd. She was dead on the
11 7th of November.

12 Q. All right, any of the other jurors that you heard
13 this morning say that they were related to him that you knew?

14 A. Like I said, I go out there in the hall. Ain't
15 nobody out there I really know. I don't even know the
16 Sheriffs. I don't know the policemen. I know the Sheriff
17 because he have been out to the house. I know Sheriff
18 Tompkins.

19 Now like I said, me and him done had a lot of run-ins. Since
20 we have been back, me and him had a lot of run-ins, but we
21 live not too far apart. So that is the Defendant's cousin if
22 that have anything to do with it.

23 **BY THE COURT:** That is good, Mr. Sawyer.

24 **BY THE JUROR:**

25 A. We are getting along, we doing, we are getting
26 along all right. We just, he charged me with disorderly
27 conduct which it wasn't. I wasn't disturbing the peace.

28 **BY THE COURT:** That is okay, Mr. Sawyer. You
29 have answered the question.

Individual Voir Dire - REST OF JURY OUT

1 BY A JUROR: Yes, sir.

2 BY THE COURT: Y'all have any questions?

3 BY MR. CARTER: No, Your Honor.

4 BY THE COURT: Okay. You may step down, Mr.
5 Sawyer.

6 BY A JUROR: Can I go back out?

7 BY THE COURT: Yeah, she is going to tell you
8 where to go.

9 (Juror 26, Mr. Sawyer, leaves the courtroom.)

10 BY THE COURT: Any objection for cause?

11 BY MR. EVANS: Your Honor, my cause would be that
12 he isn't mentally capable of serving on the case.

13 BY THE COURT: Well. That won't hold up, or at
14 least with what I have got before me, it won't hold
15 up. I'm not going to excuse him for cause. Do y'all
16 have any objection?

17 BY MR. DE GRUY: No, Your Honor.

18 BY THE COURT: Okay, I'm probably not going to
19 pronounce this right. Kynyardda Campbell.

20 BY MR. EVANS: I have got that one marked out.
21 She was a college student.

22 BY THE COURT: Okay. All right, then Cassandra
23 -- what is your name, ma'am?

24 (JUROR NO. 28, MS. CASSANDRA EVANS, entered the
25 courtroom.)

26 BY A JUROR: Cassandra Evans.

27 BY THE COURT: Okay, fine. Have a seat up here.

28 INDIVIDUAL VOIR DIRE BY THE COURT:

29 Q. State your name, please.

Individual Voir Dire - REST OF JURY OUT

1 A. Cassandra Evans.

2 Q. Ms. Evans, have you ever heard anything about this
3 case?

4 A. Yes, sir.

5 Q. How did you hear about it?

6 A. The radio, TV, and newspaper.

7 Q. All right, do you know the family of anybody
8 involved in this case?

9 A. Yes, sir.

10 Q. Which family?

11 A. Robert Golden.

12 Q. Robert Golden, all right. Have any of them
13 discussed this with you?

14 A. No, sir.

15 Q. Do you know Mr. Flowers?

16 A. I done heard of him.

17 Q. But you don't know him?

18 A. Not personally.

19 Q. Do you know his family?

20 A. Yes, sir.

21 Q. All right, are any of them your close friends?

22 A. Well, his dad and my dad singing, in singing group
23 together.

24 Q. I didn't hear you; I'm sorry.

25 A. His dad and my father used to sing in a group
26 together.

27 Q. Okay. Have any of his family talked to you about
28 this or discussed this?

29 A. No, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Did you see it on television or hear about it on
2 the radio?

3 A. I heard, seen it on TV.

4 Q. Okay. Did you hear any street talk or gossip about
5 it?

6 A. No, sir.

7 Q. Have you formed an opinion in this matter as to the
8 guilt or innocence of Mr. Flowers?

9 A. No, sir.

10 Q. Could you, if you were chosen to sit on this jury,
11 could you listen to the evidence that comes from the witness
12 stand, listen to my instructions on the law, then consult
13 with your fellow jurors and be a fair and impartial juror in
14 this case or make a decision based on that, on those things
15 that you heard?

16 A. I think so.

17 Q. I appreciate that answer. It's probably the way I
18 would answer it, but I need for you to tell me if you can.

19 A. Yes, sir.

20 Q. Okay.

21 **BY MR. EVANS:** Thank you, Your Honor.

22 INDIVIDUAL VOIR DIRE BY MR. EVANS:

23 Q. How are you doing, Ms. Evans?

24 A. All right.

25 Q. Now you say that your father and Archie Flowers,
26 the Defendant's father, sang in the same group together?

27 A. They used to. My father is deceased now.

28 Q. Is that the Unionaires?

29 A. Right.

Individual Voir Dire - REST OF JURY OUT

1 Q. When was that?

2 A. I don't remember what year it was.

3 Q. Did you go hear them?

4 A. No, sir.

5 Q. What other connections do you have? Do you know
6 the Defendant?

7 A. I done heard of him.

8 Q. Have you ever met him before?

9 A. No, not really. I mostly seen his sisters and his
10 father.

11 Q. Which ones of his sisters do you know?

12 A. That one right there. Cora.

13 Q. You know Cora?

14 A. Right.

15 Q. How do you know Cora?

16 A. Well, I think -- she used to work on the same job I
17 work at.

18 Q. Where was that?

19 A. Well, it was Multicraft then; now it's for
20 Morganite.

21 Q. How long did you work with Cora?

22 A. About a year or two.

23 Q. Y'all get to be pretty good friends?

24 A. Well, I talk to everybody. I wouldn't say we were
25 close friends. I just socialize with her.

26 Q. You know this is her brother that is on trial here
27 in this case?

28 A. Correct.

29 Q. All right, any of the other family members that you

Individual Voir Dire - REST OF JURY OUT

1 know?

2 A. I know another one of her sisters. She worked up
3 there too.

4 Q. What was her name?

5 A. I forgot her name.

6 Q. Was it Priscilla?

7 A. Right.

8 Q. How long did you work with Priscilla?

9 A. I don't think she worked there too long.

10 Q. Did you know any of the other family members?

11 A. Besides his father and his mother.

12 Q. Okay, how do did you know his mother?

13 A. From meeting her time to time.

14 Q. How would you meet her?

15 A. Like if I see her in the grocery store or
16 somewhere.

17 Q. And how long have you known his mother?

18 A. A while.

19 Q. Can you give me some rough--

20 A. Years, a year or so.

21 Q. Years? Any other family members that you know?

22 A. Besides his father, no, sir.

23 Q. So in his immediate family you know his father, his
24 mother --

25 A. --sisters--

26 Q. -- and two of his sisters, worked with both of
27 them?

28 A. Right.

29 Q. Now part of what we are doing right now is trying

Individual Voir Dire - REST OF JURY OUT

1 to find a jury that would be impartial, listen to the
2 evidence and base a decision on the evidence and not let any
3 outside factors enter into it. Do you think the fact that
4 you are good friends with his sisters, and you know his
5 mother and his father, that that would influence your
6 decision in this case?

7 A. I think it would.

8 Q. You think it would?

9 A. Yes.

10 Q. Do you think because of that, you might could be a
11 good juror on some cases but probably not on this case?

12 A. Correct.

13 Q. And you don't think you could be fair and impartial
14 on this particular case because of that?

15 A. No, sir.

16 BY MR. EVANS: Nothing further, Your Honor.

17 INDIVIDUAL VOIR DIRE BY MR. CARTER:

18 Q. One or two questions. Okay, ma'am. I am having a
19 little bit of a problem hearing you since I am sitting way on
20 the end. You said you are friends with the sister,
21 Cassandra; is that what you said?

22 A. Correct.

23 Q. Do you talk to her on the phone very much?

24 A. I have never talked to her on the phone. Just
25 worked with her.

26 Q. Oh, just worked with her, okay. If you sat on this
27 case, would you feel any pressure to decide this case in a
28 way that wouldn't offend or harm Cassandra?

29 A. I think it would because his dad and my dad was

Individual Voir Dire - REST OF JURY OUT

kind of close.

Q. So you feel-- would you be ashamed or embarrassed to face Cassandra if you found Mr. Flowers guilty?

A. No, I wouldn't say I would be ashamed. I just wouldn't, I don't think I can be a good juror during it.

BY MR. CARTER: Okay, thank you.

BY THE COURT: Let me make sure I understand you, Ms. Evans.

FURTHER VOIR DIRE BY THE COURT:

Q. According to, from Mr. Evans' question, your statement was -- I'm not trying to put words in your mouth, but I'm trying to understand what you said. You said you did not feel you could be a fair and impartial juror in this case?

A. Right.

BY THE COURT: Thank you, ma'am.

(Juror 28, Ms. Evans, leaves the courtroom.)

BY MR. EVANS: Your Honor, I move to strike for cause.

BY THE COURT: Any objection to that?

BY MR. DE GRUY: No objection.

BY THE COURT: Gregory Mitchell.

(JUROR NO. 29, MR. GREGORY HICKS MITCHELL, enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, Mr. Mitchell.

A. Greg Mitchell.

Q. Mr. Mitchell, have you heard anything about this case?

Individual Voir Dire - REST OF JURY OUT

1 A. Yeah. I have heard about it, yeah.

2 Q. How did you hear about it?

3 A. Just word of mouth.

4 Q. Did it come from anybody in any of the families of
5 anybody involved?

6 A. No.

7 Q. Was it just street talk or gossip?

8 A. Yeah.

9 Q. Have you heard about it by way of the newspaper,
10 television or radio?

11 A. Not myself. I have heard other people talk about
12 hearing it on the radio or TV.

13 Q. Did you form any opinion based on what you heard?

14 A. No.

15 Q. As to the guilt or innocence of Mr. Flowers?

16 A. No.

17 Q. If you were selected to serve as a juror in this
18 case, could you base your decision on the evidence that you
19 hear from the witness stand, the law that I give you at the
20 end of the case, and after consultation with your fellow
21 jurors, then make your decision based on that?

22 A. Uh-hum.

23 Q. Do you know of any reason you could not be fair and
24 impartial in this matter?

25 A. No.

26 **BY THE COURT:** Okay, Mr. Evans.

27 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

28 Q. Mr. Mitchell, as we have kind of covered this
29 morning, you understand that at this phase in this trial,

Individual Voir Dire - REST OF JURY OUT

1 this Defendant or any other defendant is presumed innocent by
2 law. And that is because the burden of proof is on the State
3 of Mississippi to prove to the jury that he is, in fact,
4 guilty beyond a reasonable doubt. You understand that?

5 A. (Mr. Mitchell nods his head.)

6 Q. And that that presumption stays with him until such
7 time as the State of Mississippi has proven to the jury
8 beyond a reasonable doubt that he is, in fact, guilty.
9 Basically what you are telling the Judge, anything that you
10 may have heard about the case, you have not formed an
11 opinion. You could listen to the evidence and base your
12 decision solely on the evidence as you hear it in court; is
13 that correct?

14 A. (Mr. Mitchell nods his head.)

15 **BY THE COURT:** You have to answer out. She has
16 got to take it down.

17 **BY THE JUROR:**

18 A. Yes, sir.

19 Q. I notice some of your questionnaire, I don't think
20 got filled out. Let me ask you, as far as the death penalty
21 issue, would you be able if you sat as a juror and the jury
22 convicted, would you be able to consider the death penalty as
23 one of the possible options in this particular case?

24 A. Sure.

25 Q. And again, the way the system works it's a two
26 phase trial. In the first phase it deals strictly with guilt
27 or innocence, nothing to do with penalty. If we get to the
28 second phase, then the Judge will reinstruct the jury on what
29 the law is. You may hear additional evidence, and at that

Individual Voir Dire - REST OF JURY OUT

1 point you will be asked to make a decision and deliberate
2 with the other jurors on what the appropriate penalty should
3 be. And could you, in fact, do that?

4 A. Uh-hum. Yes, sir.

5 **BY MR. EVANS:** Nothing further, Your Honor.

6 **BY MR. DE GRUY:** Thank you, Your Honor.

7 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

8 Q. Mr. Mitchell, did you fill out the questionnaire
9 this morning, or did you fill it out--

10 A. When I got in the mail.

11 Q. Was there a reason you didn't finish filling it out
12 or did you just--

13 A. Some of the questions I thought was ridiculous.
14 That's the reason I didn't fill it out.

15 Q. And you understand now that this is just part of
16 the process, and we are trying to decide, trying to determine
17 who is best able to serve on this particular jury, and so I
18 just ask you, can -- you think that we are prying too much
19 into your personal life to ask these questions?

20 A. Yeah, sort of. The only one I didn't really agree
21 with, I guess, the best I can remember is the one about what
22 TV shows do you watch. I thought that was ridiculous, and I
23 don't really watch TV that much.

24 **BY THE COURT:** You might be right, Mr. Mitchell.

25 BY MR. DE GRUY:

26 Q. You also on the Court's questionnaire, he was
27 asking whether or not you had ever been a victim of a crime?

28 A. No, I haven't.

29 Q. Have you ever been a witness in a criminal

Individual Voir Dire - REST OF JURY OUT

prosecution?

A. No.

Q. You can certainly see where those would be relevant questions?

A. Yeah, I guess.

Q. Have you ever served on a jury before?

A. I have been called up for a jury just like this here, but I never -- well, seemed like I have served on a jury, just a, just sat here and listened to the people state their comments about what they are charged of and nothing serious.

Q. In that jury service, you didn't, you weren't called on to make a decision--

A. Right.

Q. --on whether or not someone. I'm trying to skip through the irrelevant ones. You had, I believe, answered today that you have a relative in law enforcement?

A. Yes, sir.

Q. Who is that?

A. My son-in-law.

Q. Your son-in-law. And he is with?

A. Grenada Police Department.

Q. The two last questions on the Court's questionnaire, have you or anyone in your family ever been treated by a psychiatrist, psychologist, therapist, counselor or social worker?

A. No.

Q. And then the question is do you have any personal or religious beliefs that would prevent you from voting to

Individual Voir Dire - REST OF JURY OUT
1 impose the death penalty?

2 A. No.

3 Q. And I think that when Mr. Evans was asking you the
4 question, that same question essentially, your answer was
5 "Sure"?

6 A. Sure.

7 Q. And you sound, you are strongly in favor of the
8 death penalty; is that fair to say?

9 A. Right.

10 Q. Would it be fair to say that you have, if a person
11 is convicted of murder, you are sitting on the jury and you
12 have found someone beyond a reasonable doubt has
13 intentionally killed someone else. Do you think that really
14 the only appropriate punishment would be the death penalty?

15 BY MR. EVANS: Your Honor, I object. That is not
16 the proper form of the question.

17 BY THE COURT: Sustained.

18 BY MR. DE GRUY: Your Honor, I think it is
19 absolutely a proper question. We need to know whether
20 or not--

21 BY THE COURT: You need to ask it, you need to
22 explain to him what he is going to have to consider
23 and see if he will consider those things.

24 BY MR. DE GRUY:

25 Q. We will go a step further. In Mississippi there
26 has to be an additional factor for it to be capital murder,
27 that there are such things as a killing during the commission
28 of a robbery. Now if you sit on a jury and you listen to
29 evidence and you and the other 11 jurors agree that the

Individual Voir Dire - REST OF JURY OUT

1 person is guilty beyond a reasonable doubt -- and I want you
2 to understand, we are not asking you to make a decision on
3 this case; that you and the other 11 jurors agree that the
4 person is guilty beyond a reasonable doubt of killing during
5 the commission of a robbery; are you with me?

6 A. (Juror nods his head.)

7 Q. Okay. We will go to a second phase of the trial.
8 The State may or may not introduce additional evidence as the
9 Judge mentioned this morning, and the Defendant may or may
10 not introduce additional evidence to ask for the lesser
11 punishment of life in prison. And my question is just are
12 you going to consider any of these other things or in
13 particular, the mitigation, or if someone is guilty -- and
14 it's just your opinion, if someone is guilty beyond a
15 reasonable doubt of killing during the commission of a
16 robbery, do you think that person should just get the death
17 penalty?

18 BY MR. EVANS: I object. That is still not the
19 proper form of the question.

20 BY THE COURT: I am going to allow him to ask
21 that.

22 BY THE JUROR:

23 A. Do you want me to answer that?

24 Q. Yes.

25 A. I think if they are found guilty of murder, they
26 should have the death penalty. That is my answer.

27 Q. And you are not -- you don't want to hear about,
28 and this is a lot of controversy of this in our society
29 talking about the abuse excuse or something like that. But

Individual Voir Dire - REST OF JURY OUT

1 you don't want to hear any evidence from outside of the
2 evidence of the crime, evidence of someone's upbringing or
3 anything like that? If they are guilty of murder, then they
4 should get the death penalty. Is that what you are telling
5 us?

6 A. I'm saying when I hear the case, I will make my
7 decision, you know, with the other jurors or my decision, and
8 if it corresponds with the other jurors, I will make my
9 decision then. But I definitely believe in the death
10 penalty.

11 Q. And what you had answered earlier to my question
12 was that in the case of murder during the commission of a
13 robbery, in that situation you are not going to consider
14 anything else; based on that finding, the death penalty in
15 your opinion would be the appropriate punishment?

16 BY MR. EVANS: Your Honor, I object. That is not
17 an appropriate question. He has not given the options
18 of what he is to look at and ask if he will.

19 FURTHER VOIR DIRE BY THE COURT:

20 Q. The question, the reverse Witherspoon question is
21 if the jury, if you get to the sentencing phase, at that
22 point the jury would have convicted the person of capital
23 murder. At the second phase, would you automatically then
24 impose the death penalty regardless of what the facts were?

25 A. Now let me--

26 Q. --And at that stage you would also have, you might
27 have other evidence that would mitigate against that. And
28 the question is would you consider all that, or would you
29 just because of the fact that he was convicted of capital

Individual Voir Dire - REST OF JURY OUT

1 murder, would you then automatically impose the death penalty
2 regardless of what the facts of the case were?

3 A. Uh, let me see if I follow what you are saying. I
4 would listen to the facts and base my decision on the facts
5 on what I hear.

6 Q. Okay, well, to go back to Mr. de Gruy's question.
7 You are going to have two options if you get to that point.
8 You are going to have life or death. Would you just
9 disregard the life possibility and just vote for death
10 automatically?

11 A. Yes.

12 BY THE COURT: Okay.

13 BY MR. DE GRUY: I have no further questions.

14 BY THE COURT: You may step down.

15 (Juror 29, Mr. Mitchell, leaves the courtroom.)

16 BY THE COURT: Mr. de Gruy.

17 BY MR. DE GRUY: Move for cause, Your Honor.

18 BY THE COURT: That is sustained. He is stricken
19 for cause. Deborah Stafford.

20 (JUROR NO. 30, MS. DEBORAH KAY STAFFORD, enters the
21 courtroom.)

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. State your name, please, ma'am.

24 A. Deborah Stafford.

25 Q. Ms. Stafford, have you heard anything about this
26 case?

27 A. Um, not really. I mean I have heard, you know.

28 Q. Well, you knew it happened?

29 A. Right. Right.

Individual Voir Dire - REST OF JURY OUT

1 Q. How did you know that?

2 A. I would say probably some of my family and stuff
3 because I wasn't living here at the time, but I moved back
4 probably about in October. So I was originally from here,
5 but I had been gone probably about, well, since probably '83.

6 Q. Okay, and you moved back here last October?

7 A. No, sir, of '96.

8 Q. Of '96.

9 A. October of '96.

10 Q. Okay. Have you heard it discussed in the community
11 since then?

12 A. Um, I am sure I have. You know, not much but I
13 have heard it, you know.

14 Q. Have you had any family members of anybody involved
15 in this, either Mr. Flowers' family or the victims' family,
16 discuss this with you or around you?

17 A. Not really. Not really.

18 Q. What you mean by not really?

19 A. Let's see. Nobody has really said anything to me
20 about it. Mr. Flowers' mother worked at the nursing home for
21 my father. I didn't know that until last week, you know,
22 when we were talking about it and I said his mother worked
23 for my daddy. And like I knew -- I didn't know that that was
24 his father at Wal-Mart, you know.

25 Q. Right.

26 A. Stuff like that, and then I knew Ms. Rigby, Ms.
27 Carmen Rigby.

28 Q. Did you hear, did you read about it in the paper or
29 hear about it on the radio or see it on television, anything

Individual Voir Dire - REST OF JURY OUT

1 about this?

2 A. I have read it in the newspaper.

3 Q. Okay, based on all of this information that you had
4 or whatever amount of information that you had, did you form
5 an opinion as to the guilt or innocence of Mr. Flowers?

6 A. Um. (Pause) Um, not really. I really didn't know
7 who he was.

8 Q. Okay. If you were selected as a juror in this
9 case, could you make your decision based on the evidence that
10 you heard from the witness stand, the law that I give you at
11 the end of the case and consultation with your fellow jurors?
12 Could you make your decision based on that to the exclusion
13 of whatever you have heard?

14 A. Yes, sir. I think I could.

15 Q. Okay. Do you know of any reason that you could not
16 be a fair and impartial juror?

17 A. Would it help that I told you I had three kids at
18 home?

19 Q. Well--

20 A. -- I know that is not your question.

21 Q. I understand what you are saying, but that is not
22 exactly what I meant. What I mean is do you have any
23 prejudice or biases or feelings one way or another about this
24 case that would keep you from being fair and impartial?

25 A. No, sir.

26 Q. Okay.

27 **BY THE COURT:** Mr. Evans.

28 **BY MR. EVANS:** Thank you, Your Honor.

29 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

Individual Voir Dire - REST OF JURY OUT

1 Q. How are you doing this evening?

2 A. Pretty good.

3 Q. I have just got a couple of questions. You don't
4 know the Defendant?

5 A. (Juror shakes her head.)

6 Q. But you know his daddy from where he works at
7 Wal-Mart?

8 A. Uh-hum.

9 Q. How long have you known him?

10 A. I would say -- I don't really know him. I just,
11 you know, there is this gentleman that would check you out,
12 and I probably said something to him then. And then my
13 sister told me that you realize that is--

14 Q. --Okay, has he said--

15 A. --Flowers' daddy, and I said no, I didn't know
16 that.

17 Q. Has he ever said anything to you about the case?

18 A. No, sir, never said anything.

19 Q. So you just know who he is when you see him?

20 A. I do now; yes, sir.

21 Q. Okay, and his mother you say works or worked for
22 your father?

23 A. Right.

24 Q. When was that?

25 A. I do not know. And I could not tell you which one
26 she is. I just knew that the mother works there. You know,
27 that's all I know.

28 Q. Where is there?

29 A. At the Winona Manor Nursing Home.

Individual Voir Dire - REST OF JURY OUT

1 Q. Okay, and is your father still in there?

2 A. Yes, sir.

3 Q. Do you know if she is still working there or not?

4 A. No, sir; I don't. I'm assuming she does.

5 Q. All right. If she is still working there and
6 possibly helping take care of your father, is there anything
7 about that that would keep you from being fair and impartial
8 in this case?

9 A. No, sir. She doesn't take care of my father. She
10 works for my father. He is the administrator of the nursing
11 home --

12 Q. -- Oh, okay.

13 A. And she is an employee at the nursing home.

14 Q. I'm glad you said that. I was getting the wrong
15 picture.

16 A. Well, when you were like taking care of him, I was
17 like, oh, wait. She doesn't take care of him.

18 Q. Okay. But he is the administrator there?

19 A. He is the administrator.

20 Q. Thank you for bringing that to my attention.

21 A. You're welcome.

22 Q. Is there anything about the fact that she is an
23 employee there--

24 A. No, sir.

25 Q. -- that would cause you any problem?

26 A. No, sir.

27 Q. You could disregard anything that you may have
28 heard about the case and base your decision strictly on what
29 you hear in the courtroom?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir.

2 Q. And as we have gone over this morning, the Judge
3 did; at this phase in this trial or any trial any defendant
4 on trial is presumed to be innocent. The reason for that is
5 that in every case the State, which is us, has to prove to
6 the jury beyond a reasonable doubt that the person is guilty.
7 And until we have done that, the law protects him by a
8 presumption of innocence because we are the ones that have to
9 prove his guilt. Do you understand that theory of law?

10 A. Yes, sir.

11 Q. Do you have any problem with that theory?

12 A. No, sir.

13 Q. The other side of that is that once we have proven
14 to you beyond a reasonable doubt that he is guilty, that
15 presumption is no longer there to protect him. You
16 understand that?

17 A. Yes, sir.

18 Q. All right, now I want to get just a little bit into
19 the death penalty issue. You did not raise your hand this
20 morning as being one of the people that had a religious or
21 philosophical belief that you couldn't consider that as a
22 possible punishment. Is that correct?

23 A. Wait. Say that one more time.

24 Q. You don't have a religious or personal belief that
25 would prohibit you from considering the death penalty--

26 A. -- no, sir.

27 Q. --as a possible punishment? So if you were picked
28 as a juror in this case, you could consider that as one of
29 the two possible penalties if the case goes to the second

Individual Voir Dire - REST OF JURY OUT
phase?

1
2 A. Yes, sir.

3 Q. All right. And the other side of that, if this
4 Defendant is convicted and it goes to the second phase, there
5 may be new evidence put on, extra evidence. The Judge I know
6 will give additional instructions to the jury. Would you
7 listen to those instructions and listen to the evidence
8 before you decide with the other jurors which penalty is the
9 appropriate penalty?

10 A. Yes, sir.

11 BY MR. EVANS: Nothing further, Your Honor.

12 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

13 Q. Just a couple of questions, Ms. Stafford.

14 A. Okay.

15 Q. You mentioned that you also knew Ms. Rigby?

16 A. I knew her, and I also knew -- it would have been
17 Ms. Tardy's daughter and her family. I forgot to mention
18 that. I'm sorry. I just forget.

19 Q. And Ms. Tardy's daughter?

20 A. It's Ms. Ballard.

21 Q. Okay, and you know that she may be a witness in
22 this case. Were you aware?

23 A. Well, I assumed she was going to be.

24 Q. How is it that you know them?

25 A. I was K-3 teacher, and her son was, would be
26 Ms. Tardy's grandson, was a student for me. So that is how I
27 met Ms. Ballard.

28 Q. Do you still see Ms. Ballard around town?

29 A. Occasionally, I see her like, probably would have

Individual Voir Dire - REST OF JURY OUT

1 been last summer I saw her at a baseball game, at a kid's
2 baseball game, but I don't see her much.

3 Q. Now you were Ms. Tardy's grandson's--

4 A. -- teacher.

5 Q. Teacher?

6 A. Yes, sir.

7 Q. Did you ever have any occasion to discuss with
8 Ms. Ballard or someone this case?

9 A. No, sir.

10 Q. You never had any discussions with their family
11 about--

12 A. No, sir.

13 Q. --what had happened to Ms. Tardy?

14 A. No, sir.

15 Q. Now you yourself have been the victim of a violent
16 crime; is that correct?

17 A. That's correct.

18 Q. And I can't even begin to imagine how traumatic
19 that might have been. Did you go through a trial with that?

20 A. Well, I would say it went on for about a year, and
21 I was going to go to trial. And the day before I was to go
22 to trial, his attorney or something must have convinced him
23 to, you know, plead guilty because you are not going to
24 get -- so I never actually. I went to the grand jury. I
25 guess yeah, and they posted him to trial, and I never
26 actually went to trial. He got sentenced before, and he got
27 the, I guess the maximum sentence that my attorney was asking
28 for.

29 Q. And who was your attorney?

Individual Voir Dire - REST OF JURY OUT

1 A. It would have been the District Attorney. I don't
2 know. I can't remember his name. It has been so long ago,
3 you know.

4 Q. Which county was that in?

5 A. Be Pearl River County.

6 Q. Okay, it wasn't in this county?

7 A. It was not in this county. It was in Pearl River.

8 Q. Now obviously, capital murder is also a violent
9 offense, and do you think that sitting on a jury and hearing
10 testimony about a violent offense would cause you any kind of
11 emotional problems, perhaps reliving what you have been
12 through?

13 A. I don't think so. The only thing that I have a
14 problem would be is by myself at night or something, you
15 know. If I had to be, if I was selected to go with the
16 twelve or however many that have to go off, I don't think I
17 could do that by myself.

18 Q. You don't think -- I mean are you saying that if
19 the Judge said you have to be in a room--

20 A. -- by myself, I don't think I could do it. Not
21 without my kids.

22 Q. Even knowing that there is going to be a bailiff
23 down the hall?

24 A. (Juror shakes her head.)

25 Q. Outside the room maybe?

26 A. I don't think so. I really don't. Now if I had my
27 family with me, I probably could, but.

28 Q. We certainly don't want to put you, nobody wants to
29 put you in a position that is going to cause you emotional

Individual Voir Dire - REST OF JURY OUT

1 problems, and, you know, just to be honest, we don't want to
2 put in a position that may jeopardize the case one way or the
3 other because you can't fulfill your jury service. The Judge
4 has mentioned that in this case you will be sequestered.

5 A. I know.

6 Q. And you haven't mentioned anything until I asked
7 one too many questions. Are you telling us that you don't
8 think you could be sequestered?

9 A. I don't think I could be. I don't think I could
10 be. I'm sorry.

11 Q. Nobody is--

12 FURTHER VOIR DIRE BY THE COURT:

13 Q. --No, Ms. Stafford, let me ask you this question.

14 A. And, you know, today I know you asked, but.

15 Q. That is okay. Let me ask you this question. Of
16 course, the law is that you would have to be sequestered.
17 There is no other choice. But it could be arranged that if
18 the other female jurors, that you could share a room with
19 them. Would that do it?

20 A. No.

21 BY THE COURT: Okay. Any other questions of
22 Ms. Stafford?

23 BY MR. EVANS: No.

24 BY THE COURT: Thank you, ma'am.

25 (Juror 30, Ms. Stafford, leaves the courtroom.)

26 BY THE COURT: Does anybody disagree that she
27 ought to be excused for cause?

28 BY MR. DE GRUY: No, Your Honor.

29 BY MR. EVANS: No.

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** She is. Angelia Birdsong.

2 (JUROR NO. 31, MS. ANGELIA BIRDSONG, enters the
3 courtroom.

4 INDIVIDUAL VOIR DIRE BY THE COURT:

5 Q. State your name, please, ma'am.

6 A. Angelia Birdsong.

7 Q. Ms. Birdsong, you told me earlier when we had
8 everybody out here, that you didn't know anything about this
9 case or had ever heard of it; is that correct?

10 A. Other than what I have heard out there, but that's
11 it.

12 Q. You mean today?

13 A. Yeah.

14 Q. Okay. How long have you lived here?

15 A. About two years.

16 Q. Okay. And so did you even know this had occurred?

17 A. Not until the trial or whenever they sent me the
18 subpoena thing to come in.

19 Q. Okay. Have you had any discussions with anybody
20 about it since then?

21 A. (Juror shakes her head.)

22 Q. Have you formed any opinion about this case at all?

23 A. (Juror shakes her head.)

24 Q. Ms. Birdsong, if you were selected on the jury,
25 could you decide this case on the evidence that comes from
26 the witness stand, the law that I give you at the end of the
27 case, and then after consultation with your fellow jurors,
28 decide this case on that?

29 A. Yes, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Do you know of any reason that you could not be
2 fair and impartial?

3 A. No, sir.

4 Q. Okay.

5 **BY THE COURT:** Mr. Evans.

6 INDIVIDUAL VOIR DIRE BY MR. EVANS:

7 Q. Ms. Birdsong, you say you have been here how many
8 years?

9 A. Two. Well, going on three.

10 Q. Going on three. Where did you live before that?

11 A. Greenville.

12 Q. And how long did you live in Greenville?

13 A. All my life.

14 Q. So you grew up in Greenville?

15 A. Yes, sir.

16 Q. Do you have any family here?

17 A. My husband does. The Birdsongs.

18 Q. Okay, but you don't have any?

19 A. (Juror shakes her head.)

20 Q. Do you know any of the people related to this case,
21 either the Defendant or any of the victims?

22 A. No, sir.

23 Q. And you are saying that whatever you have heard
24 about the case is just what you have heard here in court
25 today?

26 A. Yes, sir.

27 Q. If you were picked as a juror on this case, would
28 you be able to listen to the evidence that comes out in open
29 court and base a decision on that evidence?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir.

2 Q. Could you be fair and impartial to both sides?

3 A. Yes, sir.

4 BY MR. EVANS: Nothing further, Your Honor.

5 BY MR. DE GRUY: Thank you, Your Honor.

6 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

7 Q. Ms. Birdsong, when you said the only thing you have
8 heard about the case was while you were out there.

9 A. Yes, sir.

10 Q. Did you mean sitting out here or out in the
11 hallway?

12 A. Just in the hallway.

13 Q. What is being discussed about the case in the
14 hallway?

15 A. Not, nothing really. Just, you know, basically
16 what happened.

17 Q. Are these jurors, other potential jurors, people
18 who have been sitting around you who are just discussing what
19 they have heard?

20 A. Just what they have heard, I guess. I mean I don't
21 know anything really.

22 Q. Based on what you have heard from these other
23 people I guess just today, have you formed any opinion?

24 A. Not really, because I mean you are supposed to be
25 innocent until proven guilty. You know, I mean everybody
26 deserves a fair trial, I guess.

27 Q. Now and you know this is a death penalty case?

28 A. Yes, sir.

29 Q. And you have said on your questionnaire that you

Individual Voir Dire - REST OF JURY OUT

1 had no beliefs that would prevent you from imposing the death
2 penalty?

3 A. Correct.

4 Q. A little bit more explanation on it; this is a
5 capital murder case. It happens in two phases; it is really
6 like two separate trials. In the first part of the trial the
7 only question is whether or not someone is guilty.

8 A. Yeah.

9 Q. And only if the jury, all twelve agree beyond a
10 reasonable doubt that the person is guilty, do we ever get to
11 the second question, the punishment issue. At that part more
12 evidence may be introduced including evidence unrelated to
13 the crime. It could be anything about a defendant. If you
14 had determined that someone was guilty, would you be able to
15 consider this other evidence, or would you have made up your
16 mind?

17 A. Well, I believe in an eye for an eye. You know, I
18 mean you do, you get done what you do to others, you know.

19 Q. So--

20 A. So I'm saying, you know, if the evidence proves
21 that he did it, then he deserves what he gave.

22 Q. Okay, and there is not -- that is a biblical
23 saying, an eye for an eye?

24 A. Yeah, but it's something everybody lives by every
25 day.

26 Q. And so that is a pretty firm belief you hold?

27 A. Yes, sir.

28 Q. That if someone kills, don't give me anything else.
29 If I believe they are guilty, then they should get the death

Individual Voir Dire - REST OF JURY OUT

1 penalty?

2 A. If they are guilty, yeah.

3 Q. And you wouldn't want to, you are not going to
4 consider anything else about their childhood or anything?

5 A. Well, the evidence at hand is what is supposed to
6 be the incriminating or not.

7 Q. But now we are going to the second phase though.
8 And if they are guilty, then that is it; they should get the
9 death penalty? Is that what you are saying?

10 A. If that's what the majority rules. Is that what
11 you are saying?

12 Q. No, we are just asking you how you feel about the
13 death penalty, and we are not asking you to tell us what the
14 law is. We are not putting you on that spot. Even if the
15 Judge tells you you can consider a person's upbringing, what
16 have you, you are not going to do that because of your belief
17 in an eye for an eye and a tooth for a tooth?

18 A. Yeah. I mean what happened at this, the Tardy
19 store is what we are supposed to be on trial, I mean
20 considering; right?

21 Q. That's--

22 A. -- If he killed them, that's what, that's what you
23 get, you know.

24 Q. Okay. Thank you.

25 **BY MR. DE GRUY:** That's all.

26 **FURTHER VOIR DIRE BY THE COURT:**

27 Q. Ms. Birdsong, let me put it to you in a different
28 way. When we get to the sentencing phase, at that point in
29 time the jury would have convicted him of capital murder.

Individual Voir Dire - REST OF JURY OUT

1 Then the jury would consider the penalty. The penalty would
2 either be life or death. At that time there might be other
3 evidence. There might be evidence of aggravating
4 circumstances to warrant the death penalty, and there might
5 be evidence of mitigating circumstances to say that even
6 though he did this, he shouldn't get the death penalty. Will
7 you consider that evidence?

8 A. Well, yeah.

9 Q. Okay. Would you after hearing that evidence or
10 hearing anything that they put on at the sentencing phase and
11 knowing that you had two choices, just automatically vote for
12 death and just exclude life as a possible penalty?

13 A. Well, I don't think he should get life because that
14 is just, really it's wasting taxpayers' money.

15 Q. So you would automatically vote for the death
16 penalty?

17 A. I mean if he actually killed them, yeah.

18 Q. If you find him, okay. Thank you, ma'am.

19 A. That's it?

20 Q. Yes, ma'am.

21 (Juror 31, Ms. Birdsong, leaves the courtroom.)

22 **BY MR. DE GRUY:** Move for cause.

23 **BY MR. EVANS:** No objection.

24 **BY THE COURT:** Strike for cause. Donna McNeer.

25 (JUROR NO. 32, MS. DONNA MCNEER, enters the
26 courtroom.)

27 INDIVIDUAL VOIR DIRE BY THE COURT:

28 Q. State your name, please, ma'am.

29 A. Donna McNeer.

Individual Voir Dire - REST OF JURY OUT

1 Q. Ms. McNeer, have you heard about this case?

2 A. Yes, sir.

3 Q. How did you hear about it?

4 A. Radio, TV.

5 Q. Did you ever hear about it from any family member
6 of anybody involved, either the Flowers' side or the victims'
7 side?

8 A. No.

9 Q. Do you know any of those people?

10 A. Yes.

11 Q. Who do you know?

12 A. All of them.

13 Q. All of them?

14 A. Yes.

15 Q. And they have never discussed this with you or in
16 your presence?

17 A. Uh-uh.

18 Q. Okay. Have you ever heard any just regular street
19 talk or gossip about this matter?

20 A. Sure.

21 Q. Have you formed an opinion based on what you heard
22 as to the guilt or innocence of Mr. Flowers?

23 A. Not that I -- not really.

24 Q. Okay. Could you sit, if you were selected to sit
25 on this case, could you make your decision on the evidence
26 that comes from the witness stand and the law that I give you
27 at the end of the case?

28 A. Sure.

29 Q. Do you know of any reason that you could not be a

Individual Voir Dire - REST OF JURY OUT

1 fair and impartial juror in this matter?

2 A. The only thing I could say would be that my family
3 was close to one of the victims.

4 Q. Which one?

5 A. BoBo.

6 Q. Okay. Would that affect you to the point to where
7 you could not be fair and impartial?

8 A. I would hope not.

9 Q. Well, I appreciate that answer, but I'm to the
10 point where I have got to know.

11 A. No.

12 Q. It would not? It would not keep you from being
13 fair and impartial?

14 A. No.

15 **BY THE COURT:** Mr. Evans.

16 INDIVIDUAL VOIR DIRE BY MR. EVANS:

17 Q. Good evening.

18 A. Hi.

19 Q. I have just got a few questions to go over with
20 you. I know there is a lot of publicity about it, and you
21 have heard some about the case. Basically, what you are
22 telling us here today, that you can disregard anything that
23 you have heard about the case and base your decision on what
24 evidence you hear in open court?

25 A. Yes, sir.

26 Q. And the Judge told everybody this morning that by
27 law this Defendant or any other defendant is presumed
28 innocent at this phase because we have not put on any proof.
29 Can you follow that presumption of law and require the State

Individual Voir Dire - REST OF JURY OUT

1 to put on proof beyond a reasonable doubt that he is guilty
2 before you would consider his guilt?

3 A. Yes, sir.

4 Q. Now you have gone into the fact that you know some
5 of the family members. It would be necessary for you to be a
6 juror on this case that you can set that aside, the fact that
7 you know them, and base your decision of guilt or innocence
8 solely on the evidence that comes out in court, to be fair to
9 both sides of the case. Can you tell us that you can do
10 that, that you can disregard the fact that you know some of
11 the folks in this case, listen to the evidence that comes out
12 in open court, and base your decision solely on the evidence
13 and nothing else?

14 A. Yes, sir. I hope I could. I believe I could.

15 BY MR. EVANS: Nothing further, Your Honor.

16 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

17 Q. Ms. McNeer, how close are you to BoBo Stewart's
18 family?

19 A. I'm not kin to them at all. It's just friends. My
20 nephew and him were friends.

21 Q. Did you attend his funeral?

22 A. Yes.

23 Q. And you have said when pressured, you think you can
24 set your personal feelings, set what you have heard aside and
25 determine guilt or innocence. Is that--

26 A. I would hope I could. I mean I would say yes. I
27 mean, you know.

28 Q. And have you formed an opinion about guilt or
29 innocence of Mr. Flowers?

Individual Voir Dire - REST OF JURY OUT

1 A. Well, it's hard to say. I mean based on gossip,
2 you know, I would say yes. I don't know any of the facts,
3 you know.

4 Q. Some of the potential jurors have said there are
5 discussions in the hallway about the case, I guess more
6 gossip. Have you heard anything out there?

7 A. Like?

8 Q. In the hall, just discussions about the case?

9 A. Like discussing we are here because of this trial,
10 that kind of thing?

11 Q. If that's, if that's what you have heard, that is
12 fine. But if there is any discussions of the rumors of who
13 did it?

14 A. Oh, no.

15 Q. Nothing like that, okay. Now that is the first
16 phase of the trial, and you are telling us you hope you could
17 be fair and impartial, but you do have an opinion?

18 A. Yes.

19 Q. So are you telling us that Mr. Flowers would have
20 to change your mind? He would have to present something to
21 change your mind?

22 A. Correct.

23 Q. Now so you're, it's sort of a legal term, but you
24 would place the burden on him to prove he is not guilty?

25 A. That's a good way to put it.

26 Q. And now assuming you have reached the decision; you
27 are on the jury; you reach a decision of guilt in any capital
28 murder case; there is a next step. There is actually like a
29 second trial to determine the appropriate punishment. Now in

Individual Voir Dire - REST OF JURY OUT

1 this case you actually know the family of one of the victims.
2 If they are asking for the death penalty and you believe that
3 the person is guilty beyond a reasonable doubt, is that the
4 only penalty you would consider?

5 A. I mean that it is either going to be death or life
6 in jail? Is that what you are asking me?

7 Q. Yes.

8 A. Could I choose either? Is that what you're asking
9 me?

10 Q. Could you consider either?

11 A. Yeah.

12 Q. And would you have any problems if you sat on the
13 jury and you believed he was guilty but that he wasn't
14 deserving of death, would you, do you think you would have
15 any problem then facing the Stewart family again?

16 A. Repeat that now.

17 Q. It's assuming you are on the jury and you sit in
18 that second phase. Even though you have decided beyond a
19 reasonable doubt that he is guilty and they have asked for
20 the death penalty, if you decide not to impose the death
21 penalty, do you think that you would have some problem,
22 would -- I guess my question is if you are sitting in the
23 jury room trying to make this decision, is the fact that you
24 know the Stewart family personally going to be weighing on
25 your mind, that you will have to face them with whatever
26 decision you make?

27 A. Probably.

28 Q. And it's really, we all understand it's unfair to
29 put you here.

Individual Voir Dire - REST OF JURY OUT

1 A. I feel like I'm on trial.

2 Q. I understand that, and we all understand. But this
3 is our only opportunity to ask these questions. Are you
4 saying that because of this personal relationship, that you
5 would be, you would feel pressured to return a death
6 sentence?

7 A. I don't know what you are asking.

8 Q. Well, you said that when you are making your
9 decision, you might be thinking about the Stewart family
10 because of your personal relationship and in the future
11 having to face them again?

12 A. Okay.

13 Q. And so my question is do you think that that may
14 unfairly weigh on you and become part of the deliberative
15 process?

16 A. Yes.

17 Q. And taking that into consideration, do you think --
18 we are just talking about the sentencing phase now because
19 you have already answered it for the first phase -- do you
20 think that truly you could be, you would consider yourself a
21 fair juror?

22 A. Well, I thought so until I got up here. Obviously,
23 not.

24 **BY MR. DE GRUY:** I have no further questions.

25 **BY THE COURT:** Thank you, Ms. McNeer.

26 (Juror 32, Ms. McNeer, leaves the courtroom.)

27 **BY MR. DE GRUY:** Move for cause, Your Honor.

28 **BY THE COURT:** Any objection?

29 **BY MR. EVANS:** No, sir.

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** Okay. Ms. Evaldi.

2 (JUROR NO. 34, MS. GAY ELISABETH EVALDI, enters the
3 courtroom.)

4 INDIVIDUAL VOIR DIRE BY THE COURT:

5 Q. State your name, please.

6 A. Gay Elisabeth Evaldi.

7 Q. Ms. Evaldi, have you heard about this case?

8 A. Yes, a little.

9 Q. And how did you hear about it?

10 A. I think mainly kind of maybe through newspaper.

11 Q. Okay. Have you heard any street talk or gossip
12 about it?

13 A. A little but not much. I haven't heard anything
14 really.

15 Q. Do you know any of the people involved, the
16 families?

17 A. No.

18 Q. Of either side?

19 A. No.

20 Q. Based on what you have heard or read or seen, Ms.
21 Evaldi, have you formed an opinion as to the guilt or
22 innocence of Mr. Flowers?

23 A. No.

24 Q. Could you, if you were selected to sit on this
25 jury, make your decision based on the evidence that comes
26 from the witness stand and the law that I give you at the end
27 of the case?

28 A. Yes.

29 Q. Do you know of any reason that you could not be

Individual Voir Dire - REST OF JURY OUT

fair and impartial?

A. No.

BY THE COURT: Mr. Evans.

INDIVIDUAL VOIR DIRE BY MR. EVANS:

Q. How are you doing, Ms. Evaldi?

A. Okay.

Q. As the Judge told you this morning, the way our system works is at this phase in the trial, this Defendant or any defendant is presumed innocent. That is because the burden of proof of proving his guilt is on the State of Mississippi, and if you are picked as a juror, we will put on proof in court. And what we will be attempting to do is prove to you beyond a reasonable doubt that he is, in fact, guilty of these charges. You understand that?

A. Yes.

Q. So the whole burden is on us?

A. Yes.

Q. We are the ones that have to prove everything in this case. Based on what you are telling the Court now, whatever you have heard about the case, can you disregard it, listen to the evidence that comes out in the courtroom, and base your decision strictly on the evidence as you hear it in court today?

A. Yes.

Q. Okay. And I want to go just a little bit into the sentencing. You understand that a capital murder case is a two part trial. The first part deals only with guilt or innocence. So if you are picked as a juror in the first phase, the jury will only decide one thing, and that is is

Individual Voir Dire - REST OF JURY OUT

1 the defendant guilty or not guilty. Do you understand that?

2 A. Yeah.

3 Q. In that phase the sentence or possible sentence
4 doesn't even enter into it. All right, if the jury convicts,
5 then we will go into a second phase. We may put on
6 additional evidence. There may be additional evidence on
7 both sides. The Court will instruct the jury on how to go
8 step by step through determining what the penalty should be.
9 The Court will instruct the jury that there are certain
10 things called aggravating factors that we may introduce that
11 may tend to show that the Defendant deserves the death
12 penalty. The Defense may put on what is called mitigating
13 factors which may tend to give some reasons arguing that he
14 doesn't deserve the death penalty, that he may deserve life
15 imprisonment. I expect that the Court will tell you how to
16 view those and what your duties are. Can you follow the
17 Court's instructions, give each of them, the aggravators and
18 the mitigating factors, what weight you think they deserve
19 and base a decision based upon what you find in that phase
20 after discussing the case with other jurors?

21 A. Yes.

22 BY MR. EVANS: Nothing further, Your Honor.

23 BY MR. DE GRUY: I don't have any questions of
24 this juror.

25 BY THE COURT: Thank you, ma'am.

26 BY A JUROR: Thank you.

27 (Juror 34, Ms. Evaldi, leaves the courtroom.)

28 BY THE COURT: Any objection to her?

29 BY MR. EVANS: No, sir.

Individual Voir Dire - REST OF JURY OUT

1 BY MR. DE GRUY: No.

2 BY THE COURT: Burnadette Braswell.

3 (JUROR NO. 35, MS. BURNADETTE BRASWELL, enters the
4 courtroom.)

5 BY THE COURT: Have a seat.

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. Would you state your name, please, ma'am.

8 A. Burnadette Braswell.

9 Q. Ms. Braswell, have you heard anything about this
10 case?

11 A. Yes, sir.

12 Q. How did you hear it?

13 A. I worked right across the street from Tardy
14 Furniture at the time of the murders.

15 Q. Okay. So you saw all the investigation going on?

16 A. Yes, sir.

17 Q. Did you happen to even go over there?

18 A. No, sir.

19 Q. I assume then you know some of the family involved
20 with this?

21 A. Yes, sir.

22 Q. Did you know some of the victims?

23 A. Yes, sir.

24 Q. Based on what you know about this case and the
25 relationship you have with those persons, have you formed an
26 opinion about this case?

27 A. No, sir.

28 Q. Okay. Did any of the family ever talk to you about
29 this case?

Individual Voir Dire - REST OF JURY OUT

1 A. No, sir.

2 Q. Has any law enforcement talked to you about the
3 case?

4 A. Yes, sir. I forgot to tell you; Robert Tompkins
5 was my second or third cousin, and he asked me did I see
6 anything. They called me to the courthouse. I worked in the
7 front office at Sta-Home, and he asked me did I see anything
8 or did I hear anything. And I told him that I did not, but
9 that was the extent of it.

10 Q. Okay. Pardon me; I may have -- it is getting late
11 in the afternoon. I may have asked this question already.
12 Have you formed an opinion as to the guilt or innocence of
13 Mr. Flowers based on what you have heard or know?

14 A. No, sir.

15 Q. If you were selected as a juror in this case, could
16 you make your decision on the evidence that comes from the
17 witness stand and the law that I give you at the end of the
18 case?

19 A. Yes, sir.

20 Q. Do you know of any reason that you could not be a
21 fair and impartial juror?

22 A. No, sir.

23 **BY THE COURT:** All right, Mr. Evans.

24 **BY MR. EVANS:** Thank you.

25 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

26 Q. Good evening. I want to go briefly through just a
27 few things with you. The Judge has told you this morning
28 that at this phase in the trial this Defendant or any
29 defendant is presumed to be innocent. That is the law

Individual Voir Dire - REST OF JURY OUT

1 because the State of Mississippi has to prove his guilt to
2 the jury beyond a reasonable doubt before he can be found
3 guilty. So what that basically means is if you were picked
4 as a juror, what we would be asking you to do is disregard
5 anything that you may have heard, listen to the evidence that
6 comes out in the courtroom, and base your decision strictly
7 on what you see in the courtroom. Can you do that for us?

8 A. Yes, sir.

9 Q. Now as the Judge has told you also, the entire
10 burden of proof is on us. The Defendant does not have to
11 prove anything to you. Now will you follow the Court's
12 instructions on that and require that we put on the type of
13 proof that would prove to you beyond a reasonable doubt that
14 he is, in fact, guilty?

15 A. Yes, sir.

16 Q. Now on the issue of the penalty, you understand
17 that this is a capital case where a possible penalty is the
18 death penalty. He could be facing the death penalty, or he
19 could be facing life. You understand those are the two
20 options?

21 A. Yes, sir.

22 Q. The way the system works, it's two phases. The
23 first part of the trial, the jury will listen to evidence.
24 The Judge will instruct the jury on what the law is, and then
25 after hearing arguments, the jury will go out and vote. But
26 at that phase the jury is not to even consider the penalty,
27 only guilt or innocence. Can you follow that instruction?

28 A. Yes, sir.

29 Q. Assuming that the jury convicts, then we will go

• IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 272-420

VOLUME 10 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT #: 2003-0071-CR

Individual Voir Dire - REST OF JURY OUT

1 into a second phase. In that phase each side may put on
2 additional evidence, but the Judge will instruct the jury on
3 what to do and how to deliberate. Will you follow the
4 Court's instructions?

5 A. Yes, sir.

6 Q. I expect that the Court will tell you that you may
7 consider any aggravating circumstances that are put on which
8 you may want to call bad acts, things that we may put on to
9 try to show that the death penalty is an appropriate
10 punishment. We expect that the Court will also tell you that
11 you may consider what is called mitigating circumstances or
12 good things. That is things that the Defense may put on to
13 try to justify that in this particular case a life sentence
14 is appropriate. We expect that the Judge to tell you that
15 you are to deliberate and consider all of those before
16 reaching a penalty in this case. Can you do that?

17 A. Yes, sir.

18 BY MR. EVANS: Nothing further, Your Honor.

19 BY MR. DE GRUY: Thank you, Your Honor.

20 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

21 Q. Ms. Braswell, just so you understand what, when we
22 talk about the first phase, we are talking about the crime
23 itself and the people in the area who may have seen things
24 and who did it. But when we are talking about the second
25 phase, the circumstances may not be related to the crime at
26 all. It may be something from a person's background, their
27 childhood. So the question is could you consider the things
28 unrelated, evidence unrelated to whether or not he did it or
29 unrelated to the crime in determining whether or not someone

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APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY _____ DC

Individual Voir Dire - REST OF JURY OUT

1 should get the death penalty or life in prison?

2 A. Repeat that. Could?

3 Q. Okay.

4 A. Just the question.

5 Q. Could you consider factors unrelated to the crime
6 and just an example, something from someone's childhood in
7 deciding whether to impose life in prison without parole or
8 the death penalty?

9 A. No, sir.

10 BY MR. EVANS: Your Honor, I think that needs to
11 go one step further in that if the Court tells the
12 jury to consider that.

13 BY THE COURT: You are making it unclear, Mr.
14 de Gruy. The Court is going to instruct her as to
15 what the aggravating circumstances are. It's also
16 going to instruct her as to mitigating circumstances
17 that she can consider. The question should be would
18 she follow the instructions on the law that contains
19 those factors and consider them in determining what
20 penalty to impose. That's one question. Then you can
21 ask her the automatic question.

22 (To Ms. Braswell) Did you understand that now,
23 Ms. Braswell?

24 BY A JUROR: I think so.

25 BY MR. DE GRUY:

26 Q. Now when I say a mitigating factor that is
27 presented may be something from a person's childhood; now the
28 Judge will have to give you an instruction of law saying that
29 you can consider it. But where we are right now is we are

Individual Voir Dire - REST OF JURY OUT

1 asking you whether or not that is something you could
2 consider?

3 **BY MR. EVANS:** Which I object, Your Honor. That
4 is not proper at this point.

5 **BY THE COURT:** It's not the proper question in
6 relation to reverse Witherspoon.

7 **BY MR. DE GRUY:** Your Honor, we take the position
8 under Morgan v. Illinois it is absolutely proper
9 because it's the only way we know whether or not the
10 juror would consider mitigating circumstances.

11 **BY THE COURT:** Not in the way you are asking it.
12 I will allow you to ask it, but I don't think you are
13 asking it in the proper form.

14 BY MR. DE GRUY:

15 Q. Okay, we will try again. If you believe beyond a
16 reasonable doubt that the person, a person has committed
17 capital murder, the killing during the commission of a
18 robbery, is it your opinion that they should get the death
19 penalty, or would you consider other penalties?

20 A. Other penalties.

21 Q. You would consider. We are not asking you how you
22 would vote. We just want to know if the person is guilty to
23 your satisfaction beyond a reasonable doubt and you are given
24 two options, would you always choose the death penalty, or
25 would you consider life in prison without parole?

26 **BY MR. EVANS:** Your Honor, still that is not the
27 proper form of the question.

28 **BY THE COURT:** I will let her try to answer it,
29 and then I'm going to ask a question when it's over.

Individual Voir Dire - REST OF JURY OUT

1 Go ahead if you understand the--

2 BY THE JUROR:

3 A. I would not always consider the death penalty.

4 Q. You are telling us you would consider both? You
5 would consider whatever options the Judge gave you?

6 A. Yes, sir.

7 Q. And just because the person is guilty of capital
8 murder, that wouldn't end it for you. You would want to hear
9 more evidence before you decide how to sentence them?

10 A. Yes, sir.

11 Q. Thank you.

12 **BY THE COURT:** Thank you, ma'am. You may step
13 down. I didn't have another question after all.

14 (Juror 35, Ms. Braswell, leaves the courtroom.)

15 **BY THE COURT:** Any objection to her for cause?

16 **BY MR. EVANS:** No, sir.

17 **BY MR. DE GRUY:** No, Your Honor.

18 **BY THE COURT:** Nancy Branch.

19 (JUROR NO. 36, MS. NANCY BRANCH, enters the
20 courtroom.)

21 INDIVIDUAL VOIR DIRE BY THE COURT:

22 Q. State your name, please.

23 A. Nancy Branch.

24 Q. Ms. Branch, do you know anything about this case?

25 A. Yes, sir, something.

26 Q. Okay. How did you get that information?

27 A. When it happened, I was teaching summer school in
28 Grenada, and I had some students who were friends of BoBo's
29 who were in class. So that was my initial information. But

Individual Voir Dire - REST OF JURY OUT

1 just watching the news, listening to reports.

2 Q. Okay. Then may I assume then that you did not get
3 your information from anybody that happened to be a witness
4 to the case; is that correct?

5 A. No, I did not.

6 Q. Did any law enforcement talk to you about it?

7 A. No.

8 Q. Have you had any discussions with the family of
9 either Mr. Flowers or of the victims?

10 A. No.

11 Q. Have any of them even discussed it around you?

12 A. No.

13 Q. Do you know any of them?

14 A. My son was the same age as BoBo and was in school
15 with him, and even though I teach school, I teach special
16 education, so I never had BoBo. So I did not know him
17 personally.

18 Q. Okay, based on the information that you have
19 obtained in the past, have you formed an opinion as to the
20 guilt or innocence of Mr. Flowers?

21 A. Yes, I have.

22 Q. All right. Do you think that opinion would keep
23 you from being fair and impartial in this case?

24 A. I don't know. I know you need a yes or a no.

25 Q. Uh-hum. I do.

26 A. Probably so. Yes.

27 Q. Okay.

28 BY THE COURT: Mr. Evans?

29 BY MR. EVANS: No questions.

Individual Voir Dire - REST OF JURY OUT

1 **BY MR. DE GRUY:** No questions, Your Honor.

2 **BY THE COURT:** Thank you, ma'am. You may stand
3 aside.

4 (Juror 36, Ms. Branch, leaves the courtroom.)

5 **BY THE COURT:** Strike her for cause. The Court
6 is going to strike her for cause.

7 **BY MR. DE GRUY:** Yes, sir.

8 **BY THE COURT:** Is there any objection?

9 **BY MR. EVANS:** No, sir.

10 **BY THE COURT:** Okay. Paul Kelly.

11 (JUROR NO. 39, MR. PAUL W. KELLY, enters the
12 courtroom.)

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. Would you state your name, please, sir.

15 A. Paul William Kelly.

16 Q. Mr. Kelly, do you know anything about this case?

17 A. Yes, sir.

18 Q. How is it that you got that information?

19 A. Well, from the papers, from television. I am, you
20 know, friends -- I knew the family of Bertha Tardy was my
21 next door neighbor. BoBo Stewart used to come through my
22 house. Him and my sons were real good friends. Carmen
23 Rigby, I knew her at baseball games and so forth.

24 Q. Based on what you have heard about this case and
25 your relationships with those people, have you formed an
26 opinion about the guilt or innocence of Mr. Flowers?

27 A. Yes, sir.

28 Q. Would it keep you from being a fair and impartial
29 juror in this case?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir.

2 BY THE COURT: Mr. Evans.

3 BY MR. EVANS: I just wanted to cover one thing,
4 Your Honor.

5 INDIVIDUAL VOIR DIRE BY MR. EVANS:

6 Q. Mr. Kelly, in addition to that, I think you have
7 said that because of your beliefs about the death penalty,
8 you could never vote to sentence anybody to death under any
9 circumstances?

10 A. I think that is up to a higher authority than me.
11 I don't think it is up to me to decide whether somebody lives
12 or dies.

13 BY MR. EVANS: Nothing further, Your Honor.

14 BY MR. DE GRUY: No questions.

15 BY THE COURT: Thank you, sir.

16 (Juror 39, Mr. Kelly, leaves the courtroom.)

17 BY THE COURT: Strike him for cause. Any
18 objection?

19 BY MR. EVANS: No, sir.

20 BY MR. DE GRUY: No, Your Honor.

21 BY THE COURT: 40, Sharon Golden.

22 (JUROR NO. 40, MS. SHARON GOLDEN, enters the
23 courtroom.)

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. State your name, please, ma'am.

26 A. Sharon Golden.

27 Q. Ms. Golden, have you heard anything about this
28 case?

29 A. Yes.

Individual Voir Dire - REST OF JURY OUT

1 Q. How did you get that information?

2 A. Newspaper.

3 Q. Have you ever talked with any member of say
4 Mr. Flowers' family or of the victims' family in this matter?

5 A. No.

6 Q. Did your information come from like street talk or
7 gossip?

8 A. No.

9 Q. How did you get it then, just from the newspaper?

10 A. Yes.

11 Q. Did you form an opinion about that, about this case
12 as to the guilt or innocence of Mr. Flowers?

13 A. No.

14 Q. If you were selected as a juror in this case, could
15 you try this case on the evidence that comes from the witness
16 stand and the instructions of law that I give you at the end
17 of the case?

18 A. Yes.

19 Q. Do you think you could be a fair and impartial
20 juror in this case?

21 A. Yes.

22 **BY THE COURT:** Mr. Evans.

23 **BY MR. EVANS:** One second, Your Honor.

24 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

25 Q. How are you doing today, Ms. Golden?

26 A. Hey.

27 Q. Ms. Golden, do you know the Defendant?

28 A. No.

29 Q. I noticed on your questionnaire that you work at

Individual Voir Dire - REST OF JURY OUT

1 Wal-Mart; is that correct?

2 A. Yes.

3 Q. So you do know the Defendant's father, Archie
4 Flowers?

5 A. No, I work at Wal-Mart in Grenada.

6 Q. Wal-Mart in Grenada?

7 A. Yes, sir.

8 Q. Okay. You live here?

9 A. Duck Hill.

10 Q. Duck Hill, okay. Do you know the Defendant at all?

11 A. No, sir.

12 Q. Do you know any of his family?

13 A. No, sir.

14 Q. Now I understand from your questionnaire, I
15 think -- no, from the answer that you gave in court today,
16 that you have a religious belief that is against the death
17 penalty; is that correct?

18 A. Yes.

19 Q. Is that belief such that you just do not believe in
20 the death penalty at all?

21 A. Yes.

22 Q. Of course, that is what we are here on today is a
23 case where the death penalty is a possible penalty. You
24 understand that?

25 A. Yes.

26 Q. If you were picked as a juror on this case and the
27 Judge told you that the law in this case authorized the death
28 penalty and if the facts justified it, are your views so
29 strong against the death penalty that you could not even

Individual Voir Dire - REST OF JURY OUT

1 consider the death penalty as a possible penalty?

2 A. (Pause) Could you repeat that.

3 Q. Let me just, let me go step by step through it.

4 You are against the death penalty; is that correct?

5 A. Yes, sir.

6 Q. And it's because of religious beliefs?

7 A. Yes, sir.

8 Q. Those religious beliefs that you have, and nobody
9 is questioning your beliefs; I want you to understand that
10 because all of us are entitled to our own beliefs on
11 everything. But in this particular case the death penalty is
12 one option that the jury can look at, and what I need to know
13 and what the Court needs to know is are your religious
14 beliefs so strong that you could not vote for the death
15 penalty in any case regardless of what the law was and what
16 the facts of the case was?

17 A. No.

18 Q. You couldn't do it?

19 A. No.

20 Q. Okay. And nobody is questioning that. We just
21 need to know.

22 A. Okay.

23 Q. Let me go one step further and make sure I ask you
24 the question the right way. Since that is a possible penalty
25 in this case, if you were picked as a juror on this case and
26 the Judge told you at the end of the case that the law in
27 this particular case authorized the death penalty and if you
28 found that the evidence justified the death penalty, are your
29 beliefs so strong against the death penalty that you could

Individual Voir Dire - REST OF JURY OUT

1 not consider it and could not give the death penalty?

2 A. No, I could not consider it.

3 BY MR. EVANS: Thank you.

4 BY MR. DE GRUY: I think I just have one
5 question, Your Honor.

6 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

7 Q. Ms. Golden, do you remember filling out this five
8 page questionnaire?

9 A. Yes.

10 Q. And the question that I think Mr. Evans is asking
11 is the same question, the last question on that
12 questionnaire. It asked if you had any personal or religious
13 beliefs that would prevent you from imposing the death
14 penalty, and you said no. Is that correct? Do you remember
15 that?

16 A. I don't remember, but I might have put it though.

17 Q. And that's what we just want to be clear on. And
18 we are not asking you to make a decision in this case because
19 you haven't heard any evidence. We just want to know whether
20 or not the death penalty is something you could consider if
21 the Court instructed you that based on convicting someone of
22 capital murder, that is one of the punishment options. If
23 the Judge told you that and said you need to consider these
24 other facts and make the decision, could you consider the
25 death penalty, or would you always choose another option?

26 A. I guess I could consider it.

27 Q. And that is all we want to know. That is the same
28 answer you gave on your questionnaire. Is that right?

29 A. Yes.

Individual Voir Dire - REST OF JURY OUT

1 Q. That if we are not talking about this particular
2 case because you haven't heard any evidence, but just in
3 general, if a person, if you have found someone guilty of
4 capital murder beyond a reasonable doubt and the Judge
5 instructed you that there are two sentencing options, death
6 or life without parole, could you consider both of those
7 options?

8 A. Yes, I could consider it.

9 BY MR. DE GRUY: That's all I have, Your Honor.

10 BY MR. EVANS: May I follow up, Your Honor?

11 BY THE COURT: Yes, sir.

12 FURTHER VOIR DIRE BY MR. EVANS:

13 Q. Ms. Golden, let me ask you a follow up to that.
14 Could you give the death penalty in any case?

15 BY MR. DE GRUY: Your Honor, we would object to
16 that.

17 BY THE COURT: Well, you have got to put it in
18 Witherspoon.

19 BY MR. EVANS:

20 Q. Could you give the death penalty in any case where
21 the Judge authorized it was appropriate -- well, let me just
22 rephrase it. In any case that you could be picked on, if the
23 Judge told you that the law authorized the death penalty and
24 the facts justified it, could you yourself vote for the death
25 penalty in any case?

26 A. Yes, I could consider it.

27 Q. No, that is not my question. Could you vote for
28 it?

29 A. Yes.

Individual Voir Dire - REST OF JURY OUT

1 BY THE COURT: Okay. Anything further?

2 BY MR. EVANS: No, sir.

3 BY MR. DE GRUY: No, Your Honor.

4 BY THE COURT: You may step down.

5 (Juror 40, Ms. Golden, leaves the courtroom.)

6 BY MR. EVANS: We would ask for cause because she
7 specifically said at least a couple of times that she
8 could not consider the death penalty. I know she has
9 bounced back and forth, but there are specific cases
10 on where they bounced back and forth that it's left up
11 to the Court to determine from that if they could make
12 a fair juror.

13 BY THE COURT: Well, I determine that her final,
14 her last answer was definite enough to where I'm not
15 going to excuse her for cause. Lisa Bane.

16 (JUROR NO. 41, MS. LISA RODGERS BANE, enters the
17 courtroom.)

18 INDIVIDUAL VOIR DIRE BY THE COURT:

19 Q. State your name, please.

20 A. Lisa Bane.

21 Q. Ms. Bane, have you ever heard about this case or
22 anything about it?

23 A. Yes, sir.

24 Q. How did you hear that?

25 A. Just what I have seen in the newspaper recently.

26 Q. Okay, when is say the first time you ever heard of
27 it?

28 A. Actually I think I remember when it happened. I
29 didn't live here. I lived in Louisville. I remember seeing

Individual Voir Dire - REST OF JURY OUT

1 it on television, just the fact that it happened.

2 Q. When did you move here, Ms. Bane?

3 A. We have been here about a year and a half.

4 Q. Okay. Do you know any of the family involved with
5 this or--

6 A. -- the only--

7 Q. -- Mr. Flowers or any of the victims?

8 A. Yes, sir. The only one I know is Mr. Flowers'
9 father, Mr. Archie.

10 Q. And he works at Wal-Mart?

11 A. Yes, sir. My husband is the manager of Wal-Mart.

12 Q. Okay.

13 A. Mr. Archie, I mean--

14 Q. So you know him through that relationship?

15 A. Just like speaking acquaintance, yes, sir.

16 Q. Okay. Have you heard any street talk or gossip
17 about it since you lived here?

18 A. I teach in Grenada, so I'm not here very often. I
19 have heard, you know, just mostly today.

20 Q. Have you formed any opinion based on what you have
21 heard or read or seen on television about this case as to the
22 guilt or innocence of Mr. Flowers?

23 A. No, sir. I don't think so.

24 Q. If you were selected on this jury, could you listen
25 to the evidence that comes from the witness stand, the law
26 that I give you at the end of the case, and then make your
27 decision based on that?

28 A. Yes, sir.

29 Q. Do you know of any reason that you could not be a

Individual Voir Dire - REST OF JURY OUT

1 fair and impartial juror in this case?

2 A. No, sir.

3 BY THE COURT: Okay, Mr. Evans.

4 BY MR. EVANS: Thank you, Your Honor.

5 INDIVIDUAL VOIR DIRE BY MR. EVANS:

6 Q. How are you doing this evening?

7 A. I'm fine.

8 Q. How long has your husband been manager of Wal-Mart
9 here?

10 A. He started in May of let's see, 2002.

11 Q. And I guess that you have known the Defendant's
12 father basically that same length of time?

13 A. I wouldn't even say I know him. I just, he has
14 checked me out at Wal-Mart a few times, and I have spoken to
15 him.

16 Q. Okay, has he ever talked to you about the case?

17 A. Oh, no, sir.

18 Q. Do you know if he has ever talked to your husband
19 about it?

20 A. No, sir. I know he hasn't.

21 Q. The fact that he does work there and works for your
22 husband, is there anything about that that would make it
23 difficult for you to be fair and impartial to both sides in
24 this case?

25 A. I don't believe so. No, sir.

26 Q. Could you listen to the evidence in the case and
27 base your decision strictly on the evidence in this case?

28 A. Yes, sir.

29 Q. And going a step further, the Judge has told you

Individual Voir Dire - REST OF JURY OUT

1 that a capital case is two phases. The first phase deals
2 strictly with guilt or innocence. The second phase, if the
3 jury has convicted the Defendant, deals with what penalty is
4 appropriate. Now my question there is based upon the fact
5 that his father works for your husband, would you be able to
6 be as fair and impartial to both sides in deciding what the
7 appropriate penalty should be, or would that affect you in
8 any way?

9 A. I think if I saw that circumstances warranted that
10 the death penalty, I believe I could vote for it.

11 Q. Okay, and--

12 A. It would be difficult, but I think, I mean
13 regardless of connections, but I think I could do it if I saw
14 that the circumstances warranted it.

15 Q. All right. I expect that what would happen in the
16 second phase, the State may put on some additional evidence,
17 and we may put on what the Court calls aggravating
18 circumstances or bad acts to try to show to the jury that the
19 death penalty is the appropriate penalty. We expect that the
20 Defense will put on what is called mitigating circumstances
21 or good things that they can bring up about the Defendant's
22 life to justify a life in prison sentence. I also expect
23 that the Court will give the jury an instruction and tell
24 them that they can consider all of those factors, give them
25 what weight they feel they deserve, and deliberate with each
26 other and decide based upon everything that has come out and
27 that the Judge has told the jury to consider, which penalty
28 is appropriate in this particular case. If you were picked
29 as a juror, could you follow the Court's instruction and do

Individual Voir Dire - REST OF JURY OUT

1 it as the Court tells you to?

2 A. Yes, sir.

3 BY MR. EVANS: Nothing further, Your Honor.

4 BY MR. DE GRUY: No questions, Your Honor.

5 BY THE COURT: You may step down.

6 (Juror 41, Ms. Bane, leaves the courtroom.)

7 BY THE COURT: Any objections for cause?

8 BY MR. EVANS: No, sir.

9 BY MR. DE GRUY: No, Your Honor.

10 BY THE COURT: Okay, we are going to take about a
11 ten minute break. I will just give y'all, tell you
12 where we are going to go. We are going to go until
13 about 6:00 tonight and then we will quit, and we will
14 resume in the morning. Okay?

15 BY MR. EVANS: All right.

16 (FOLLOWING A BRIEF RECESS, INDIVIDUAL VOIR DIRE
17 CONTINUED IN OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT
18 PRESENT.)

19 BY THE COURT: Number 42, Tasha Hugger.

20 (JUROR NO. 42, MS. TASHA BENITA HUGGER, enters the
21 courtroom.)

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. Would you state your name, please.

24 A. Tasha Hugger.

25 Q. You may sit down. Ms. Hugger, have you heard
26 anything about this case?

27 A. Um, yes.

28 Q. Okay. How did you get that information?

29 A. Well, everywhere. People, you know, community.

Individual Voir Dire - REST OF JURY OUT

1 Q. Just community talk?

2 A. Yes.

3 Q. Do you know the families involved?

4 A. Yes.

5 Q. Which ones do you know?

6 A. I know his mom and his sister.

7 Q. The Flowers family?

8 A. Yes, sir. I know the whole family.

9 Q. Have you discussed that with any of them?

10 A. Well, yeah, with his brother.

11 Q. With his brother?

12 A. Uh-hum.

13 Q. Do you know any of the victims' family?

14 A. No.

15 Q. Okay. How well do you know his family?

16 A. Well, me -- his sister Priscilla, we used to, you
17 know, run together, you know.

18 Q. Okay.

19 A. Hang out.

20 Q. Would that relationship with his family affect you
21 to the point to where you couldn't be fair and impartial in
22 this case?

23 A. I'm afraid it will.

24 Q. You are afraid that it would?

25 A. Yes.

26 Q. Could you give me a more definite answer than that?

27 A. Well, really I don't think he's, he is not. He
28 ain't guilty.

29 Q. So you have formed an opinion; is that right?

Individual Voir Dire - REST OF JURY OUT

1 A. Basically.

2 Q. Okay.

3 BY THE COURT: Mr. Evans.

4 BY MR. EVANS: Thank you, Your Honor.

5 INDIVIDUAL VOIR DIRE BY MR. EVANS:

6 Q. How are you doing, Ms. Hugger?

7 A. All right.

8 Q. You say that you and Priscilla, the Defendant's
9 sister, are good friends?

10 A. Yes.

11 Q. How long have you known her?

12 A. Maybe 5, 6 years.

13 Q. Would you mind speaking up just a--

14 BY THE COURT: -- You have got to speak loud
15 enough for everything to hear you.

16 BY THE JUROR:

17 A. Five or six years.

18 Q. And y'all are pretty good friends?

19 A. Yes.

20 Q. Y'all run together?

21 A. Well, off and on.

22 Q. Have you ever discussed the case with her?

23 A. Yes.

24 Q. What did y'all discuss in the case?

25 A. Well, basically, I asked her about him, you know,
26 asked her how he is doing. Well, I never just, you know,
27 just really discussed, you know, his case or anything. I
28 just asked her, you know, how he is doing or something like
29 that.

Individual Voir Dire - REST OF JURY OUT

1 Q. Do you know the Defendant too or just his brother
2 and sister?

3 A. I really just don't know Curtis, but, you know, I
4 just know the brothers and sisters.

5 Q. And you say his brother; you are talking about
6 Archie, Jr.?

7 A. Yes.

8 Q. You say you have discussed the case with him?

9 A. Yes.

10 Q. When did you discuss the case with him?

11 A. Back when I was working at KI.

12 Q. So you worked with him?

13 A. Yes.

14 Q. What did he tell you about the case?

15 A. I think the last, I think he was in Tupelo then. I
16 really don't remember, but I know he was in Tupelo when they
17 was trying him in Tupelo.

18 Q. Okay, and from talking with his brother and sister,
19 you are convinced at this point that he is not guilty?

20 A. Well, no. I always have seen it, you know, that I
21 didn't think he did it.

22 Q. So that is just your belief?

23 A. Well, yeah. My belief.

24 Q. So based upon the fact that you already have an
25 opinion, are you saying that you couldn't be a fair and
26 impartial juror and listen to evidence and base the decision
27 on what you hear in court?

28 A. (Juror shakes her head.) I just wouldn't be fair,
29 you know.

Individual Voir Dire - REST OF JURY OUT

1 Q. I can't hear you.

2 A. I wouldn't be fair to this case.

3 Q. You wouldn't be fair to this case?

4 A. Uh-uh.

5 Q. Okay, and just to make sure that I cover
6 everything, this morning you told the Judge that you didn't
7 believe in the death penalty also. Is that correct?

8 A. That's correct.

9 Q. And is it your belief that you could not vote for
10 the death penalty on any case regardless of what the law was
11 or the facts were?

12 A. Uh-hum. Yes. That's with any case, not just this
13 case.

14 Q. Not just this case but any case?

15 A. Yes.

16 BY MR. EVANS: Nothing further.

17 BY MR. DE GRUY: Nothing, Your Honor.

18 BY THE COURT: You may step down, Ms. Hugger.

19 (Juror 42, Ms. Hugger, leaves the courtroom.)

20 BY MR. EVANS: Move for cause.

21 BY THE COURT: Any objection?

22 BY MR. DE GRUY: No objection.

23 BY THE COURT: Okay, I strike her for cause. 45,
24 Julia Bond.

25 (JUROR NO. 45, MS. JULIA ANN BOND, enters the
26 courtroom.)

27 INDIVIDUAL VOIR DIRE BY THE COURT:

28 Q. State your name, please.

29 A. Julia Ann Bond.

Individual Voir Dire - REST OF JURY OUT

1 Q. Ms. Bond, do you know anything about this case?

2 A. No, I really don't.

3 Q. Have you ever heard -- did you know it happened?

4 A. Yes, I knew it happened. I heard it on the radio
5 the first day that it happened and read it in the Winona
6 Times one time. But other than that, I don't; I haven't
7 heard nothing about it. When I got this summons, I didn't
8 know what it was for.

9 Q. Okay, did you -- based on the information that you
10 got in the past, have you formed any opinion about this case
11 as to the guilt or innocence of Mr. Flowers?

12 A. Well, not really because I didn't know him, you
13 know.

14 Q. Okay. Well, you understand that if you were
15 selected on the jury, under your oath as a juror, you would
16 have to decide this case on the evidence that comes from the
17 witness stand and the instructions on the law that I give you
18 at the end of the case. Could you do that?

19 A. I think I could.

20 Q. Okay, now I appreciate that, ma'am, but I have got
21 to know whether you can?

22 A. No. Uh-uh.

23 Q. You don't think you could?

24 A. Uh-uh.

25 **BY THE COURT:** Mr. Evans.

26 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

27 Q. Ms. Bond, how are you doing?

28 A. Fine.

29 Q. I want to follow up on a different issue also. In

Individual Voir Dire - REST OF JURY OUT

1 your questionnaire and in your response to the Judge this
2 morning, you have also said that you do not believe in the
3 death penalty; is that correct?

4 A. I don't.

5 Q. And is that belief a personal or religious belief?

6 A. It's just my personal belief.

7 Q. Okay. And is that belief so strong that you could
8 not consider the death penalty in any case?

9 A. I think so.

10 Q. You think it is?

11 A. Uh-hum.

12 Q. And if you were picked as a juror on this case and
13 the Judge told you that the law authorized the death penalty
14 and if you found that the facts justified it, are you telling
15 us that you yourself could not vote for the death penalty on
16 any case?

17 A. (Pause) Restate it.

18 Q. All right, your belief is against the death
19 penalty; is that right?

20 A. That's right.

21 Q. Is that a strong belief? Do you strongly disagree
22 with the death penalty?

23 A. Yes, I do.

24 Q. Okay, if you were picked as a juror, could you ever
25 vote for the death penalty on any case?

26 A. No, but I believe in if, like they were killed, you
27 know. I believe that the one that did it should get the same
28 thing that they got, you know.

29 Q. But you don't believe in giving the death penalty?

Individual Voir Dire - REST OF JURY OUT

1 A. (Juror shakes her head.)

2 Q. You are confusing me. Let's take it one step at a
3 time.

4 BY THE COURT: I believe she has pretty well
5 answered that question though to the satisfaction of
6 the Court.

7 BY MR. EVANS: All right.

8 BY THE COURT: If there is anything further, I
9 will let you go into it.

10 BY MR. EVANS: All right.

11 BY THE COURT: Mr. de Gruy.

12 BY MR. DE GRUY: Yes, Your Honor. Thank you.

13 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

14 Q. Ms. Bond, I think you threw us all with your last
15 answer. Now just to give you a little more information to be
16 more fair to you; capital murder, the charge of capital
17 murder in Mississippi involves the killing during the
18 commission of another crime such as robbery. So if a jury
19 finds someone guilty beyond a reasonable doubt of killing
20 during the commission of a robbery, then they have a second
21 half of the trial to decide punishment. Do you understand
22 that?

23 A. (Juror nods her head.)

24 Q. So the question is at that phase of the trial the
25 State may give you what are called aggravating factors,
26 reasons that they say there should be a death penalty. And a
27 defendant or any citizen who is accused can then put forth
28 evidence to say why they want, why they should get a life
29 sentence. Do you understand that?

Individual Voir Dire - REST OF JURY OUT

1 A. (Juror nods her head.)

2 Q. And the jury decides which punishment to impose.
3 And so the question that we have to ask you now is would you,
4 would you be able -- if you were serving as a juror, would
5 you be able to consider both options?

6 A. No.

7 Q. And you would only consider life in prison? Is
8 that what you are telling us, that you would never consider
9 the death penalty?

10 A. No.

11 BY MR. DE GRUY: I have no further questions.

12 BY THE COURT: You may step down, ma'am.

13 BY A JUROR: Is that all?

14 BY THE COURT: Yes, ma'am.

15 (Juror 45, Ms. Bond, leaves the courtroom.)

16 BY THE COURT: What do y'all say?

17 BY MR. EVANS: Cause.

18 BY MR. DE GRUY: No objection.

19 BY THE COURT: Okay. Strike her for cause. Let
20 me say this, gentlemen. Once they say that they can't
21 be fair and impartial, it doesn't matter whether they
22 believe in the death penalty or not. They are going
23 to go for cause. I mean there is no way to
24 rehabilitate that. Now if they equivocate, then we
25 can go further. But if they are emphatic about they
26 cannot be fair and impartial, they just can't serve as
27 jurors in this case. So that might speed us up a
28 little bit. Bertram Mortimer.

29 (JUROR NO. 46, MR. BERTRAM S. MORTIMER, enters the

Individual Voir Dire - REST OF JURY OUT
courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please, sir.

A. Bertram Spivy "Buddy" Mortimer.

Q. Mr. Mortimer, have you heard anything about this case?

A. Yes, sir.

Q. How is it that you heard it?

A. Several sources. Newspaper primarily, but also I am good friends with the daughter of one of the victims and the son-in-law of one of the victims.

Q. Is that Mr. and Ms. Ballard?

A. Right.

Q. Okay. And you have discussed this case with them, or they have discussed it with you or in your presence; is that right?

A. Yes, sir.

Q. Mr. Mortimer, have you formed an opinion about the guilt or innocence of Mr. Flowers in this matter based on what you have heard or been told?

A. Yes, sir. I have.

Q. Would that information then keep you from being a fair and impartial juror?

A. I'm afraid it would. Yes, sir.

BY THE COURT: All right. Gentlemen.

BY MR. EVANS: No questions.

BY MR. DE GRUY: No questions, Your Honor.

BY THE COURT: Thank you, Mr. Mortimer.

(Juror 46, Mr. Mortimer, leaves the courtroom.)

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** I'm going to strike him for cause.

2 Any objection?

3 **BY MR. EVANS:** No, sir.

4 **BY MR. DE GRUY:** No, Your Honor.

5 **BY THE COURT:** 47, Theresa Sproles.

6 (JUROR NO. 47, MS. THERESA D. SPROLES, enters the
7 courtroom.)

8 INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. State your name, Ms. Sproles.

10 A. Theresa D. Sproles.

11 Q. Ms. Sproles, have you heard anything about this
12 case?

13 A. Yes, sir.

14 Q. How did you get that information?

15 A. Just from the radio or TV or just street talk.

16 Q. Do you know any of the family?

17 A. I know of them. They are not personal, close
18 friends of mine.

19 Q. So you have got no information from them?

20 A. No, sir. When BoBo was young, my daughter, when
21 they were in elementary school, my daughter and BoBo claimed
22 to be sweethearts, but that was it.

23 Q. Okay. Do you know any of the Flowers family?

24 A. No, sir.

25 Q. Based on what you heard--

26 A. -- Well, I take that back. I do know Mr. Flowers
27 that works at Wal-Mart.

28 Q. You just know of him or--

29 A. Know of him, yes, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Well, based on what you heard, have you formed an
2 opinion as to the guilt or innocence of Mr. Flowers?

3 A. On what I have heard, yes.

4 Q. Do you think that what you have heard on the
5 information that you have got that you formed an opinion on
6 would be such that it would keep you from being a fair and
7 impartial juror in this case?

8 A. No, sir.

9 Q. Okay. Do you think that if you were seated as a
10 juror, that you could listen to the evidence in this case and
11 get my instructions on the law and then after consultation
12 with your fellow jurors, then make a decision to the
13 exclusion of how, how you have felt about this case?

14 A. Yes, sir.

15 Q. Okay.

16 BY THE COURT: Mr. Evans.

17 BY MR. EVANS: Thank you.

18 INDIVIDUAL VOIR DIRE BY MR. EVANS:

19 Q. Good evening.

20 A. Hello.

21 Q. I have just got a few questions I want to follow up
22 with. You understand from what the Judge told you this
23 morning that at this phase in the trial, any defendant, this
24 defendant or any other defendant is presumed innocent?

25 A. Yes, sir.

26 Q. Because we have not put on any proof to the jury at
27 this point.

28 A. Yes, sir.

29 Q. And the burden of proof is on the State to prove

Individual Voir Dire - REST OF JURY OUT

1 the Defendant is guilty beyond a reasonable doubt. He
2 doesn't have to prove anything. You understand that?

3 A. Yes, sir.

4 Q. Now is what you are telling the Court here today
5 that whatever you may have heard about the case, you can
6 completely disregard? If you were picked as a juror, you
7 could listen to the evidence that comes out in the courtroom
8 and base your decision entirely on the evidence that you hear
9 in the courtroom?

10 A. Yes, sir.

11 Q. And the fact that you knew some of the victims, the
12 fact that you know the Defendant's father from Wal-Mart, you
13 could disregard all of that and base your decision on nothing
14 other than what you hear in the courtroom?

15 A. Yes, sir.

16 Q. Okay. Now I want to very briefly go into the
17 second phase. You understand from what the Court has said
18 that a capital case is two parts. The first part we will put
19 on proof; you will hear different evidence. The Court will
20 instruct the jury on what the law is, and the jury will
21 decide on only one issue, and that is guilt or innocence.
22 The penalty has nothing to do with the first phase. You
23 understand that?

24 A. Yes, sir.

25 Q. If the jury convicts, then we go into a second
26 phase. In that the State may put on what is called
27 aggravating circumstances or bad acts, bad things for the
28 jury to consider. And what we are doing is putting those on
29 in an attempt to justify that the death penalty will be the

Individual Voir Dire - REST OF JURY OUT

1 appropriate penalty. The Defense, on the other hand, we
2 expect to put on what is called mitigating circumstances, and
3 they may be anything from age to different facts about the
4 defendant's life, trying to convince the jury that the
5 appropriate penalty will be life. You understand that?

6 A. Uh-hum.

7 Q. The Judge will give the jury an instruction, and in
8 that instruction it will tell the jury how they are to
9 deliberate and how they are to weigh and look at different
10 mitigating evidence and aggravating evidence. If you are
11 picked as a juror and have reached the second phase, will you
12 listen to the Court's instructions and follow them and
13 consider both penalties, the death penalty and life, look at
14 the evidence and the law that the Judge gives you and then
15 determine which sentence is appropriate?

16 A. Yes, sir.

17 BY MR. EVANS: Nothing further, Your Honor.

18 BY MR. DE GRUY: Just a few questions, Your
19 Honor.

20 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

21 Q. Ms. Sproles, you said your daughter and BoBo
22 Stewart were close as children?

23 A. Right. They were classmates. They were in the
24 same class.

25 Q. About what age?

26 A. Probably about, let's see, 10? From 8 to 12, I'm
27 really not sure.

28 Q. And they told people they were sweethearts?

29 A. Yes, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Have you had discussions about BoBo's death with
2 your daughter?

3 A. No, sir. Not, I mean just at the time that it was
4 going on, but nothing else.

5 Q. Y'all talked about?

6 A. Their relationship, you know, them being class
7 friends and class sweethearts; nothing other than that. Just
8 bringing up the past memories.

9 Q. And I would imagine you had to comfort her. This
10 was a difficult time for her?

11 A. Well, yes. She had changed and started going to
12 another school, and they were not as close as they were when
13 they were in elementary school.

14 Q. So it would be safe to say she went through a
15 grieving process?

16 A. Yes, sir.

17 Q. And you were there for her?

18 A. Yes, sir.

19 Q. Did y'all attend the funeral?

20 A. No, sir.

21 Q. Does your daughter know that you got your summons
22 for jury duty?

23 A. Yes, sir.

24 Q. And did y'all discuss?

25 A. None at all.

26 Q. You just told her you got the summons?

27 A. Uh-hum.

28 Q. Back, I guess it was in '96 when you and your
29 daughter were discussing BoBo's death and how that affected

Individual Voir Dire - REST OF JURY OUT

1 her; did y'all ever have discussions about what ought to
2 happen to the person?

3 A. Yes, sir. But it was, I mean everybody had the
4 same opinion, but you know, we based that opinion on what we
5 had heard and what we had seen.

6 Q. And what was your opinion?

7 A. Then?

8 Q. Yes.

9 A. By the evidence that we had heard and seen in the
10 paper and in the radio, you know, TV, that he was guilty.

11 Q. And you still hold that opinion?

12 A. Yes, sir; with an open mind, yes, I do. I can
13 still, you know, listen to the evidence, you know, with an
14 open mind.

15 Q. Okay, and so there may be, Mr. Flowers may be able
16 to present evidence to you that would change your mind?

17 A. I have got an open mind; yes, sir. I do.

18 Q. So you just, so he could present some amount of
19 evidence that would change your opinion?

20 A. I mean I can't sit here and say that he would
21 change my mind because I don't have, I don't know because I
22 haven't heard that evidence. But I could say that I could
23 sit here, you know, and with an open mind and listen to the
24 evidence and make that decision, you know, according to the
25 evidence.

26 Q. But from where we are right now, you have reached
27 an opinion, but you're saying you have an open mind, and you
28 may change that opinion?

29 A. I could. According to the evidence, you know, the

Individual Voir Dire - REST OF JURY OUT

1 evidence that is presented.

2 Q. And that is where -- so there would have to be
3 evidence that suggested he didn't do it that would have to be
4 presented to change your mind?

5 A. Well, repeat that again now.

6 Q. There would have to be evidence presented that
7 suggested he did not do it in order to change your opinion?

8 A. Yes, sir. I guess, you know, I have been like
9 everybody else. My opinion has been, you know, my mind has
10 been made up based on the evidence and the, you know, of what
11 I have heard from everyone else. You know, I haven't talked
12 to anyone, seen anyone, talked to anyone about it. So I
13 don't have a clue about what any of the evidence has been in
14 the past, you know, and what it will be now.

15 Q. But as we sit here right now and you have told us
16 you have formed an opinion, that you would place a burden on
17 him -- I'm kind of using a legal term, but you would place
18 some burden on him to come forth with evidence to change your
19 opinion?

20 A. You know, I don't, I really don't understand what
21 you are asking me.

22 Q. Well, what I'm trying to find out is that both
23 Mr. Evans and the Judge have talked about the presumption of
24 innocence.

25 A. Uh-hum.

26 Q. And we all live in the real world. No one really
27 has a blank slate, but we need to know whether you are
28 telling us that he would have some burden on him to show his
29 innocence. Is that what you are saying?

Individual Voir Dire - REST OF JURY OUT

1 A. I don't really understand. I'm sorry; I don't
2 understand. You're saying that his burden, his burden;
3 right?

4 Q. Would you in your mind place a burden on him
5 because you have formed an opinion in this case?

6 A. And my burden is against him because of the
7 evidence that I have heard?

8 Q. Exactly.

9 A. Or seen? No.

10 Q. You wouldn't require that of him?

11 A. Um. Well, yeah, I think I would.

12 Q. And now for the -- we have talked about going into
13 this second phase of the trial.

14 A. Okay.

15 Q. That you also said you had formed an opinion as to
16 what the appropriate punishment was?

17 A. Right.

18 Q. And that would be for whoever did it?

19 A. Right.

20 Q. And so whoever you found guilty beyond a reasonable
21 doubt, you think should get the death penalty; is that
22 correct?

23 **BY MR. EVANS:** Your Honor, that is not the proper
24 form of the question.

25 BY THE JUROR:

26 A. If you are asking me if I believe in the death
27 penalty--

28 **BY THE COURT:** -- I will let--

29 BY THE JUROR:

Individual Voir Dire - REST OF JURY OUT

1 A. --I do. I do. But I mean I believe in, I believe
2 in justice. Are you asking, you know, are you asking me do I
3 believe in life imprisonment?

4 Q. Would you consider it?

5 A. Yes, sir.

6 Q. You would consider life imprisonment?

7 A. Yes, sir.

8 Q. But you have, you have formed your opinion. Is
9 this something else you would be open minded and might
10 consider something else if evidence was presented?

11 A. If it was there, yes, sir.

12 Q. But just so I am clear, you have already formed an
13 opinion on the sentence also; is that?

14 A. Yes, sir.

15 **BY MR. DE GRUY:** No more questions.

16 **BY MR. CARTER:** One moment.

17 **BY MR. DE GRUY:**

18 Q. One more question. When we talked about him having
19 some burden, him having to produce evidence, are you saying
20 that he would have to take the witness stand in order for you
21 to consider anything but guilt?

22 A. Not necessarily.

23 Q. Okay.

24 **BY MR. EVANS:** Your Honor, may I follow up on
25 that?

26 **BY MR. CARTER:** We object, Your Honor.

27 **BY THE COURT:** I think I have heard enough on
28 this. Ms. Sproles, thank you. You may step down.

29 (Juror 47, Ms. Sproles, leaves the courtroom.)

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** Ms. Sproles has stated that she
2 has formed an opinion and that the Defendant would
3 have to put on evidence to overcome that opinion as to
4 his guilt. The fact is she has expressed that her
5 opinion is not only does she not presume that he is
6 innocent; she presumes that he is guilty. Therefore,
7 I strike her for cause. Any objection to that?

8 **BY MR. EVANS:** Yes, sir. I object for the
9 record.

10 **BY THE COURT:** Okay. 48, Jerry Hudson.

11 (JUROR NO. 48, MR. JERRY D. HUDSON, enters the
12 courtroom.)

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. State your name, please, sir.

15 A. Jerry Hudson.

16 Q. Mr. Hudson, do you know anything about this case?

17 A. Yes, sir.

18 Q. How do you know it?

19 A. What I have read in the newspaper and after it
20 happened and what I saw on TV after it happened.

21 Q. Do you know any of the families involved?

22 A. No, sir.

23 Q. Either for the Defendant or for the victims?

24 A. No, sir.

25 Q. So you have not discussed it with them at all; is
26 that correct?

27 A. No, sir.

28 Q. Have you heard it discussed in the community?

29 A. Some I guess; yes, sir.

Individual Voir Dire - REST OF JURY OUT

1 Q. Have you formed an opinion based on what you have
2 heard as to the guilt or innocence of Mr. Flowers?

3 A. No, sir.

4 Q. If you were selected as a juror in this case, could
5 you decide this case on the evidence that comes from the
6 witness stand and the law that I give you at the end of the
7 case?

8 A. Yes, sir.

9 Q. Do you know of any reason that you could not be
10 fair and impartial in this case?

11 A. No, sir.

12 BY THE COURT: All right, Mr. Evans.

13 BY MR. EVANS: Thank you, Your Honor.

14 INDIVIDUAL VOIR DIRE BY MR. EVANS:

15 Q. Good evening.

16 A. Evening.

17 Q. I have just got a few things I want to go over with
18 you. We went over briefly this morning that in this phase in
19 this trial or any criminal trial, the defendant is presumed
20 innocent. That is because the burden of proof is on the
21 State of Mississippi. It's on us to prove to the jury beyond
22 a reasonable doubt that he is, in fact, guilty. And that is
23 why that presumption is with him at this point is because we
24 have put on no proof. You understand that? So that is why
25 it is important that you disregard anything that you may have
26 heard earlier because the jury, the Judge will instruct the
27 jury that they are to base their entire decision of guilt or
28 innocence on what they hear in the courtroom, and you are
29 telling us that you can, in fact, do that?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir.

2 Q. Okay. To follow up just a little bit on the burden
3 of proof, not only do we have the burden of proof of proving
4 it to the jury beyond a reasonable doubt, but the defendant
5 doesn't have to prove anything to the jury. You understand
6 that? The entire burden is on us?

7 A. Yes, sir.

8 Q. Okay, I want to follow up just a little bit on the
9 two phases. This is a capital murder charge, which the first
10 phase of the trial, the jury will only consider guilt or
11 innocence. I think the Judge briefly went into that this
12 morning. I don't know how much detail he went into it; I
13 don't remember, but you understand in the first phase the
14 only thing the jury will consider is guilt or innocence?

15 A. Yes, sir.

16 Q. And if the jury convicts in this case, then we go
17 into the second phase. In the second phase each side can put
18 on different things. We expect that the State will put on at
19 that phase what is called aggravating circumstances, and
20 that's things that we feel will justify the jury considering
21 the death penalty as an appropriate punishment. We expect
22 that the Defense will put on what is called mitigating
23 circumstances, and that is things for the jury to consider a
24 life sentence as an appropriate punishment. The Judge will
25 give the jury instructions and tell the jury what all they
26 can consider. If you are picked as a juror, can you follow
27 the Court's instructions, weigh the aggravating circumstances
28 and the mitigating circumstances, and then make a decision as
29 to what penalty is appropriate in this particular case?

Individual Voir Dire - REST OF JURY OUT

1 A. Yes, sir. I could.

2 Q. And we expect the Court will tell you and they
3 already have; he already has to a certain extent this
4 morning. At that phase the jury is not to just say okay, we
5 have gotten to the second phase; we are going to
6 automatically give the death penalty, or we are going to
7 automatically give life. It's a proper procedure to go
8 through. The Judge will instruct the jury, and then the jury
9 is to consider all the possibilities and make a decision in
10 their mind at that time after deliberating with each other
11 which decision they think is appropriate. Do you understand
12 that?

13 A. Yes, sir.

14 Q. And you can do that?

15 A. Yes, sir.

16 BY MR. EVANS: Nothing further, Your Honor.

17 BY MR. DE GRUY: A few questions, Your Honor.

18 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

19 Q. Mr. Hudson, I think what I'm hearing is that you
20 are a supporter of the death penalty in general?

21 A. Yes, sir.

22 Q. Is that a religious belief or just a personal
23 opinion?

24 A. Personal opinion.

25 Q. Do you feel strongly about that or it's something
26 you give much thought to?

27 A. Fairly strongly.

28 Q. So it would be fair to say you are, you lean
29 towards the death penalty?

Individual Voir Dire - REST OF JURY OUT

1 A. Not necessarily. I believe in certain instances it
2 should be, yes.

3 Q. Now in Mississippi the death penalty is not even
4 available for just murder for intentional killing. It's not
5 an option. There must be some other factor involved such as
6 a robbery; say there is a killing during the commission of a
7 robbery. Is that a situation where you would strongly
8 support the death penalty?

9 **BY MR. EVANS:** That is not an appropriate
10 question.

11 **BY THE COURT:** That is not an appropriate
12 question.

13 **BY MR. DE GRUY:** Now Your Honor, we can get into
14 why it is an appropriate question after, but I need to
15 know. He has told us he strongly supports the death
16 penalty, and I think that is information we need to
17 have.

18 **BY THE COURT:** Well, that's right, and he told
19 you, but that is not what your last question was.

20 **BY MR. DE GRUY:**

21 Q. If you sit through a trial; you are serving on the
22 jury, and you find someone guilty of capital murder; in
23 general would you say you would then be leaning towards the
24 death penalty?

25 **BY MR. EVANS:** I object, Your Honor. That is not
26 proper.

27 **BY THE COURT:** That is not proper.

28 **BY MR. DE GRUY:** I'm not going to be able to ask
29 potential jurors about their feelings on the death

Individual Voir Dire - REST OF JURY OUT

1 penalty?

2 BY THE COURT: No, sir. But you are going to
3 have to ask it in the right way. The right way is
4 that you must ask it in the form and the manner
5 prescribed by the reverse Witherspoon, and that is not
6 it. You know that, Mr. de Gruy.

7 BY MR. DE GRUY: To the extent of my questioning
8 on the death penalty issue, I am limited to
9 Witherspoon?

10 BY THE COURT: That's what the Court said. The
11 question is whether or not he would disregard any
12 option but the death penalty if it got to that phase
13 and would not consider any other. Would he
14 automatically impose the death penalty regardless of
15 whatever options he had, and that's the law.

16 FURTHER VOIR DIRE BY THE COURT:

17 Q. Would you do that?

18 A. Would you repeat the question, please.

19 Q. All right. If you get to the penalty phase, you
20 will be presented with some options. In other words, at
21 that point in time the jury will have found the Defendant
22 guilty.

23 A. Yes, sir.

24 Q. Then it would be up to the jury to make a
25 determination about sentence. At that phase both parties may
26 put on additional evidence, or they may adopt the evidence
27 from the first part of the trial. Also at that phase, the
28 State may put on evidence of what is called aggravating
29 factors or factors that would warrant the death penalty.

Individual Voir Dire - REST OF JURY OUT

1 Also at that phase, the Defendant may put on what is called
2 mitigating factors which may be anything. I mean it may
3 involve just about anything involved with his life that would
4 mitigate against imposing the death penalty. Those things
5 will come to you in the form of instructions from the Court
6 as to things that you must consider, and you must, are going
7 to have to make certain findings in that regard before you
8 can return the verdict. And the question is when you get to
9 that phase and you are presented with all that, will you
10 automatically rule out life at that time and only consider
11 the death penalty and not consider the life as an option?

12 A. I would consider both.

13 BY THE COURT: Okay.

14 BY MR. DE GRUY: But based on the Court's ruling,
15 that's all the questions I have.

16 BY THE COURT: Okay. You may step down, Mr.
17 Hudson.

18 (Juror 48, Mr. Hudson, leaves the courtroom.)

19 BY THE COURT: Okay.

20 BY MR. DE GRUY: Your Honor, just briefly for the
21 record, I understand the Witherspoon issue, but we
22 also have to, this is our opportunity to question
23 these jurors in depth about their views on the death
24 penalty so we can form peremptory challenges. The
25 Court's ruling that we may only ask the reverse
26 Witherspoon question limits our ability in that sense
27 and violates Knox v. Collins and a line of cases
28 coming from there and Mississippi Supreme Court. Knox
29 v. Collins is the Fifth Circuit.

Individual Voir Dire - REST OF JURY OUT

1 **BY THE COURT:** Well, of course, I did not limit
2 you in asking as to what his feelings were about the
3 death penalty where he responded that he was strongly
4 in favor of it. So you certainly have that
5 information. And that certainly ought to be some
6 grounds to form a basis for a peremptory challenge.

7 **BY MR. DE GRUY:** It is, Your Honor, and our
8 objection is that I wasn't allowed to continue to ask
9 him and ask him about his ability to consider
10 mitigation. But I think I certainly do have enough
11 information on that juror.

12 **BY THE COURT:** I'm going to not excuse him for
13 cause. Wanda Hathcock.

14 (JUROR NO. 49, MS. WANDA G. HATHCOCK, enters the
15 courtroom.)

16 INDIVIDUAL VOIR DIRE BY THE COURT:

17 Q. State your name, please.

18 A. Wanda Hathcock.

19 Q. Ms. Hathcock, do you know anything about this case?

20 A. Yes, sir. Just news media, paper, so forth.

21 Q. Do you know any of the family?

22 A. Yes, sir.

23 Q. Who do you know?

24 A. I know the Rigbys. I know the Ballards, and I know
25 the Stewart's some.

26 Q. Okay. Have you talked to any of them about this
27 case?

28 A. Yes, sir.

29 Q. Based on what you have heard and your discussions

Individual Voir Dire - REST OF JURY OUT

1 with them, have you formed an opinion as to the guilt or
2 innocence of Mr. Flowers?

3 A. Yes, sir.

4 Q. Okay. Would that opinion keep you from being a
5 fair and impartial juror in this case?

6 A. Yes, sir.

7 BY THE COURT: Mr. Evans.

8 BY MR. EVANS: No questions, Your Honor.

9 BY THE COURT: Mr. De Gruy?

10 BY MR. DE GRUY: No questions, Your Honor.

11 BY THE COURT: All right, you may step down.

12 (Juror 49, Ms. Hathcock, leaves the courtroom.)

13 BY THE COURT: I'm going to excuse her for cause.

14 Any objection to that?

15 BY MR. EVANS: No, sir.

16 BY THE COURT: By the Defense?

17 BY MR. DE GRUY: No, Your Honor.

18 BY THE COURT: Number 50, Vicki Pearson.

19 (JUROR NO. 50, MS. VICKI RENAEE PEARSON, enters the
20 courtroom.)

21 INDIVIDUAL VOIR DIRE BY THE COURT:

22 Q. State your name, please.

23 A. Vicki Renaee Pearson.

24 Q. Ms. Pearson, do you know anything about this case?

25 A. I have heard some things about it.

26 Q. Okay, do you know any of the family?

27 A. I taught Roxanne's son Jeremy in fourth grade.

28 Q. Okay. Have you had any discussions with any of the
29 victims' family about this matter?

Individual Voir Dire - REST OF JURY OUT

1 A. No.

2 Q. How about with the Defendant's family?

3 A. No.

4 Q. Would you say you are personal friends with any of
5 those people?

6 A. I mean I am Rox-- through teaching Jeremy, you
7 know, I dealt with Roxanne.

8 Q. And the information that you received about this
9 matter, did you get it, how did you get it? Was it street
10 talk, gossip or media or what?

11 A. Well, both. I mean.

12 Q. Did you ever talk to anybody that purported to be a
13 witness or actually know the facts of this case?

14 A. No.

15 Q. Did you form any opinions about the guilt or
16 innocence of Mr. Flowers in this matter?

17 A. Well, when, like when it's in the paper and it says
18 he has been convicted then, of course, you form an opinion.
19 I mean because you take it as the truth and then--

20 Q. So you know about the other trials?

21 A. Right.

22 Q. Would that fact affect you at all, the fact of what
23 those juries did affect you in this case at all and keep you
24 from being fair and impartial?

25 A. No. It won't affect me. I will be fair.

26 Q. Okay. You would not consider that at all?

27 A. No.

28 Q. If you were selected on this jury, could you listen
29 to the evidence in this case and take my instructions on the

Individual Voir Dire - REST OF JURY OUT

1 law and apply them to the evidence and reach a decision based
2 on that to the exclusion of what you have read or heard or
3 know about?

4 A. Yes.

5 Q. Okay. Do you know of any reason that you could not
6 be fair and impartial, and I want you in answering that to
7 consider what you know about the previous trials and
8 everything else. Could you be fair and impartial?

9 A. Yes.

10 BY THE COURT: Okay.

11 BY MR. EVANS: Thank you, Your Honor.

12 INDIVIDUAL VOIR DIRE BY MR. EVANS:

13 Q. Good evening. I just want to go into a few things
14 with you. Of course, I think everybody in the county has
15 heard something about the case. But you also state that you
16 know about the other trials. You understand at this phase
17 where we are, this would be just as if this case had never
18 been tried. Anything that the jury bases their decision on
19 has to come from open court, not something you have read in
20 the paper, not something you have heard about. Are you
21 telling us that if you were picked as a juror, to be fair to
22 both sides, you could disregard anything that you have heard
23 about the case and base your decision strictly on what you
24 hear in the courtroom today?

25 A. Yes.

26 Q. Now we have kind of gone through this, and it goes
27 along with what I was just talking about. At this phase in
28 this trial or any trial, the defendant is presumed to be
29 innocent. He has that presumption because the burden of

Individual Voir Dire - REST OF JURY OUT

1 proof is on us, the State of Mississippi, to prove to a jury
2 that he is guilty beyond a reasonable doubt. He can't, he
3 doesn't have to prove anything. The burden is solely on us
4 to prove it, and until such time as we have proven to a jury
5 beyond a reasonable doubt that he is guilty, he could not be
6 convicted. Do you understand that?

7 A. Yes.

8 Q. Do you have any problem with that theory of the
9 law?

10 A. No.

11 Q. And you are telling us that you could disregard
12 anything you have heard, base a decision strictly on what you
13 have heard in the courtroom, and disregard everything else?

14 A. Yes.

15 Q. All right, and I want to briefly go into the two
16 phases. As the Judge told you this morning, this is a
17 capital case. One of the two possible penalties that the
18 defendant could get is the death penalty. The other is life.
19 The way the system works, we have what is considered the
20 first phase or the guilt phase, guilt or innocence phase. In
21 that phase the jury hears evidence. The Judge will instruct
22 the jury on what the law is, and the jury will decide only
23 one thing, and that is guilt or innocence. The penalty isn't
24 even to be considered at that point. You understand that?

25 A. Yes.

26 Q. Can you do that?

27 A. Yes.

28 Q. In the second phase each side can put on additional
29 evidence. The State will more than likely put on aggravating

Individual Voir Dire - REST OF JURY OUT

1 circumstances, things that we will argue justify the death
2 penalty. The Defense, on the other hand, can put on
3 mitigating circumstances. That is things that may try to
4 convince the jury that a life sentence is the appropriate
5 sentence in this particular case. After that is done, the
6 Judge will read instructions to the jury, and those
7 instructions, the Judge will tell the jury what to consider,
8 what they should consider as aggravating circumstances, what
9 they should consider as mitigating circumstances. And the
10 Court will tell the jury how they are to look at those, and
11 then the jury will have to go through the instructions step
12 by step and follow those instructions, looking at the things
13 that the Court says they should look at as mitigators and
14 looking at the things that the Court says are aggravators.
15 And only then should the jury consider which penalty is
16 appropriate. And that is based upon the law that the Judge
17 gives and the aggravating and mitigating circumstances that
18 the jury is to consider. If you are picked as a juror, can
19 you look at those mitigators, the aggravators, and the law
20 the Judge gives and base your decision of which sentence is
21 appropriate on what you find at that time?

22 A. Yes.

23 BY MR. EVANS: Nothing further, Your Honor.

24 BY MR. DE GRUY: Thank you, Your Honor.

25 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

26 Q. Ms. Pearson, you said you were a friend of Roxanne
27 Ballard's. You had taught her child?

28 A. I taught Jeremy in fourth grade two years ago.

29 Q. Okay. Have you seen her in the past two years?

Individual Voir Dire - REST OF JURY OUT

1 A. I have, I have bought furniture at Tardy's
2 Furniture, but I bought it from Frank.

3 Q. Is it fair to say you are close to that family?

4 A. No.

5 Q. But now did you say that you had discussed the case
6 with them at some point?

7 A. No. No. I have never--

8 Q. You have not gotten any of your information from
9 Ms. Ballard?

10 A. No.

11 Q. Or from that family?

12 A. No.

13 Q. Okay. Now you had said earlier this morning, I
14 believe, that there had been three people in your family who
15 had been murder victims?

16 A. Right.

17 Q. Do you believe that sitting on a jury -- and you
18 are really the only one that knows this -- that sitting on a
19 murder jury and hearing testimony perhaps from a pathologist,
20 medical examiner, maybe even having to see pictures, based on
21 your experience which thankfully is fairly unique of having
22 three people in your family murdered, do you think that you
23 could really be a fair juror in a murder case?

24 A. I do.

25 Q. How long ago were these family members murdered?

26 A. I believe it was around '97 was when my husband's
27 uncle was murdered. And then it was just several months
28 after that that my husband's cousin was murdered. And then,
29 but it has probably been about '93 when my cousin was.

Individual Voir Dire - REST OF JURY OUT

1 Q. Were all of these cases in Mississippi?

2 A. Two.

3 Q. And do you know whether or not those were death
4 penalty cases?

5 A. No, they were not.

6 Q. Were you involved in any way as a witness or
7 supporter of your husband in the procedures in those trials
8 or those cases?

9 A. I wasn't. I mean I was here, but I wasn't. I mean
10 I supported the family since it was, you know.

11 Q. And you feel like you could set that personal
12 tragedy aside and hear a case as a juror even knowing it's a
13 murder case?

14 A. Right.

15 Q. Go ahead.

16 A. The murder on my husband, I don't know if I have --
17 it was not intentional.

18 Q. So it was not murder?

19 A. Well.

20 Q. It was an accident?

21 A. Whatever.

22 **BY THE COURT:** Manslaughter?

23 A. I guess.

24 Q. Now when you said that -- now you understand that
25 when we are talking about the death penalty, we are talking
26 about the killing during the commission of a robbery?

27 A. Uh-hum.

28 Q. It won't be an accident. It wouldn't be, you would
29 never get to that second phase if the jury believed it was an

Individual Voir Dire - REST OF JURY OUT

1 accident or self-defense or anything like that. So if you
2 find the person guilty beyond a reasonable doubt of killing
3 during the commission of a robbery, would you then be able to
4 hear additional evidence, why the State thinks this is
5 deserving of the death penalty and why Mr. Flowers believes
6 he should not get the death penalty? Are you saying you
7 could consider all of that evidence before reaching your
8 decision?

9 A. Yes. That is kind of confusing, but I think I know
10 what you are talking about.

11 Q. Well, I just want to make sure you understand that
12 this is not, that the guilt phase is where we determine
13 whether there is accidents or whether there is--

14 A. --Oh, I understand that.

15 Q. Okay, so you referred to an accidental killing
16 earlier as a murder, and that's why I was, I wanted to be
17 sure you understood.

18 A. Well, one was and one wasn't an accidental killing,
19 so I understand the difference.

20 Q. The one that was, in fact, a murder; that did not
21 involve the death penalty?

22 A. No. No.

23 Q. And when we talk about mitigating circumstances
24 that may be presented, it may not have anything to do with
25 the offense. It may have things to do with the person's life
26 before or after their arrest. It may not have anything to do
27 with the offense. You understand that?

28 A. Uh-hum.

29 Q. And that is something you would be able to

Individual Voir Dire - REST OF JURY OUT
consider?

A. Right. Yes.

BY MR. DE GRUY: I have no other questions, Your Honor.

BY THE COURT: You may step down, ma'am.

(Juror 50, Ms. Pearson, leaves the courtroom.)

BY THE COURT: What do y'all say to her?

BY MR. EVANS: I have no objection.

BY MR. DE GRUY: We have no objection, Your Honor.

BY THE COURT: Okay, this is a good stopping point. Now we have got to get some order here a little bit.

BY MR. EVANS: Is the Court, I guess the Court is going to go ahead and let the ones know that you've--

BY THE COURT: --Yeah, here is what I'm going to do. (To the Bailiff) Have you gotten the list that we did of the ones that are excused? Okay, come here. We are going to give you some more.

What I'm going to do is I'm going to let her take those back there and excuse them. I'm going to bring the rest of them, including the ones who we have been through who have not been excused and tell them they will be back, all of them to be back in the morning at 9 o'clock.

BY MR. EVANS: Yes, sir.

BY THE COURT: Okay.

BY MR. DE GRUY: Your Honor, are we going to bring, are you going to bring them all back in to

Discussion - JURY OUT

1 discharge them for the day?

2 BY THE COURT: All the ones that are left.

3 BY MR. DE GRUY: Right.

4 BY THE COURT: Yes.

5 BY MR. DE GRUY: And I would just ask that you
6 make --

7 BY THE COURT: --yeah, about not talking--

8 BY MR. DE GRUY: The jurors have said about
9 talking in the hallway. It may be a good time to tell
10 them that they are not to discuss the case at all.

11 BY THE COURT: Yeah, we will do that. We
12 certainly will do that. Okay, y'all are going to
13 probably have to help me with this.

14 (To the Bailiff) The ones that you gathered up,
15 right.

16 BY BAILIFF BROWNING: Yeah, they are the ones
17 that have got the little circles on them.

18 BY THE COURT: Okay, I'm going to skip the ones
19 that are not here that everybody agreed, and she has
20 already released. All right. 2, 3, 4, 7, 8, 8A, 9,
21 11, 13. All right, 15 stays. 16 is gone. 17 stays.
22 Wait a minute.

23 BY MR. EVANS: That is all on the front page that
24 stays.

25 BY THE COURT: Right, okay. If I don't watch
26 out, I confuse myself. 19, 23. 24 stays. 25 stays;
27 26 stays. 28, 29, 30, 31, 32. 34 and 35 stay. 36
28 goes. 39 goes. Golden stays, number 40. Number 41
29 stays. Number 42 goes. Number 45 goes. Number 46

Discussion - JURY OUT

1 goes. Number 47 goes, and number 48 stays. And
2 number 49 goes, and number 50 stays. Does that
3 correspond with what y'all have got?

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** Okay, those additional ones that I
6 have just called, if you will go get them and take
7 them back here. You can tell those folks that they do
8 not have to come back.

9 **BY BAILIFF BROWNING:** Okay.

10 **BY THE COURT:** Let her do that. As soon as she
11 gets them separated and all like that, then you can
12 bring the rest of them in. In the morning, I'm
13 thinking about taking the ones that have at least been
14 qualified to this point, when they come in the
15 morning, let's put them in like the supervisors' room
16 to kind of separate them from everybody. Does that
17 suit y'all? Do you think that is appropriate?

18 **BY MR. DE GRUY:** I think that would be a good
19 idea.

20 **BY MR. EVANS:** That will be fine.

21 **BY THE COURT:** All right. I will give you the
22 names here in a minute. It's only about, I think it
23 is maybe eight, something like that. Let's see; I can
24 count real quick.

25 **BY MS. FERRARO:** Eleven. We have eleven.

26 **BY THE COURT:** Eleven? Oh, well, we are further
27 along than I thought.

28 **BY MR. DE GRUY:** Your Honor, it might be good
29 after, to start doing that after they are -- if they

Jurors released for the night

1 are not struck, to allow them -- I don't know if we
2 can, if that is feasible, but rather than put them
3 back with everyone else.

4 **BY THE COURT:** That is probably a good idea. Let
5 me see if I can find a place to put them. Can we get
6 them in the board room?

7 **BY THE SHERIFF:** Eleven?

8 **BY THE COURT:** Well, yeah. I mean we will start
9 there, and we will -- we are going to do that
10 procedure. If they are going to stay, we will figure
11 it out. We will get them in a room.

12 JURY PANEL ENTERS THE COURTROOM.

13 **BY THE COURT:** Ladies and gentlemen, this is as
14 far as we can go tonight. I know y'all are glad to
15 hear that. I'm going to let you go home, but I'm
16 going to have to have you back in the morning at 9
17 o'clock so we can continue with this process. And as
18 you can see, it is time consuming, but that's just the
19 way it is. I do not want you discussing this matter
20 with anybody or allowing anybody to discuss it with
21 you, and that means you can't even discuss it amongst
22 yourselves, and you should not even be discussing it
23 in the hallways when you are out there together. But
24 certainly when you go home tonight, your family is
25 going to inquire as to what went on today, and you can
26 tell them you were at court so they will know where
27 you were, but other than that, you tell them Judge
28 Morgan said you can't talk about this at all. When we
29 get all this done, then you can talk about it all you

Jurors released for the night

1 want to. But right now it's important that you not
2 discuss it with anybody or allow anybody to discuss it
3 with you or discuss it amongst yourselves. It is also
4 important since you have absolutely heard no evidence
5 in this case whatsoever that you form no opinions
6 about this matter other than whatever opinions you
7 might have, and we are going to ask you about
8 tomorrow. No new opinions; let me put it that way.

9 Any other instructions that the attorneys wish
10 that I give the jurors?

11 **BY MR. EVANS:** No, sir.

12 **BY MR. DE GRUY:** No, Your Honor.

13 **BY THE COURT:** Okay, I will see y'all back here.
14 We will start promptly at 9 o'clock. Now it is
15 important that you be here at 9 o'clock so we can get
16 started. And of course, if you forget or something
17 like that, I have got to send Sheriff Thornburg out
18 there to see you to get you back up here, so I'm going
19 to expect y'all to be here; okay?

20 **BY MR. CARTER:** Your Honor, can you also tell
21 them that we can't talk to them?

22 **BY THE COURT:** I already did. I already told
23 them, but I will tell them again. The lawyers are not
24 going to talk to you because I have told them they
25 couldn't. Don't talk to them either. Okay, I will
26 see you in the morning.

27 COURT WAS RECESSED ON FEBRUARY 2, 2004, AT 6:17 PM.
28
29

February 3, 2004

1 (COURT WAS DULY OPENED ON FEBRUARY 3, 2004, WITH
2 ALL COUNSEL, THE DEFENDANT, AND THE JURY PANEL PRESENT. THE
3 CLERK DID A ROLL CALL OF THE JURORS. JURORS 90 AND 101 WERE
4 ABSENT AT THIS TIME BUT CAME IN LATER IN THE MORNING. THE
5 COURT CALLED COUNSEL TO THE BENCH OUT OF THE HEARING OF THE
6 JURY FOR THE FOLLOWING:)

7 **BY THE COURT:** She has gone to make us a list.
8 There was one name left off the list. But I don't
9 know how long that is going to take, so we are going
10 to go ahead and get started. We will get y'all the
11 list when we can. I think the next one up is Jeffrey
12 Davis. Is that right?

13 **BY MR. EVANS:** That's right.

14 **BY THE COURT:** Okay. (To the Bailiff) Now let
15 me see you. Have you put those folks left in the
16 room?

17 **BY THE BAILIFF:** Yes, sir.

18 (The Court conferred further with the Bailiff.)

19 END BENCH CONFERENCE

20 **BY THE COURT:** Okay, ladies and gentlemen, we are
21 going to start the process again. I apologize for us
22 not getting started exactly at 9 o'clock as we should
23 have, but we had some list problems and had a couple
24 of folks that didn't come back. So we had to tend to
25 that. I'm going to ask you, if you will, I need for
26 you to go back out into the hall. I hope we have got
27 enough chairs for you today, and then we will start
28 this process again, and the first person I need is
29 Jeffrey Davis.

More jurors qualified

1 **BY THE BAILIFF:** Judge, we have got a couple now
2 that haven't been sworn in.

3 **BY THE COURT:** Okay, well, let's bring them up
4 here and get them sworn in.

5 **BY THE BAILIFF:** All right, the two that wasn't
6 here yesterday-- have you got their names? Ms. Alex,
7 Ms. Robinson.

8 (The Clerk entered the courtroom with the new list
9 and conferred with the Court.)

10 **BY THE COURT:** I need the two jurors that showed
11 up today.

12 **BY THE CLERK:** I have got two sitting in the
13 office.

14 **BY THE COURT:** They are coming.

15 **BY THE CLERK:** No, that is not the two. I have
16 got two more.

17 **BY THE BAILIFF:** You have got two more in your
18 office?

19 **BY THE COURT:** Give them the first oath.

20 (Four people were sworn to answer the questions by
21 the Clerk.)

22 **BY THE COURT:** Okay. To serve on a jury in this
23 state, you have to meet certain legal qualifications.
24 I'm going to go over those with you, and if they apply
25 to you, you should let me know. You have got to be at
26 least 21 years of age. You must be able to read and
27 write. You must be a registered voter in Montgomery
28 County to serve on this case, and you cannot have been
29 convicted of a felony. You must not have been

More jurors qualified

1 convicted of the unlawful sale of intoxicating liquors
2 within the last five years. You cannot be a habitual
3 drunkard or a common gambler. You must not have a
4 case pending in this court, and you must not have
5 served on a jury in this county within the last two
6 years. Does that apply to any of you?

7 **BY THE JURORS:** No, sir.

8 **BY THE COURT:** If you are over 65, you can claim
9 that as an exemption from jury service. Are any of
10 you over 65?

11 **BY THE JURORS:** No.

12 **BY THE COURT:** Okay. If you have a doctor's
13 excuse, I can excuse you for that.

14 **BY A JUROR:** My husband is supposed to be picking
15 mine up at 9 o'clock.

16 **BY THE COURT:** Okay. When he gets that back up
17 here, then you need to take it in. There is a
18 document you are going to have to sign in the Clerk's
19 office, and that will get you excused. What's your
20 name, ma'am?

21 **BY A JUROR:** Lela Robinson.

22 **BY THE COURT:** Okay, Ms. Robinson, if you have
23 got that doctor's excuse, then you can just have a
24 seat out there. You just make sure you get that
25 document signed for me now and get the excuse in the
26 file. Okay?

27 **BY A JUROR:** Yes, sir.

28 **BY THE COURT:** All right. Any of y'all got a
29 doctor's excuse?

More jurors qualified

1 **BY A JUROR:** I got to see the doctor the 10th of
2 this month.

3 **BY THE COURT:** Okay. Well, we might be through
4 by then. If you have somebody in your family who is
5 so sick that you must take care of them and there is
6 nobody to take care of them other than you, I could
7 excuse you for that. If you own your own business and
8 that business would shut down if you are here, I could
9 excuse you for that. Does that apply to any of you?

10 **BY THE JURORS:** No.

11 **BY THE COURT:** If you are selected on this jury,
12 you will be sequestered. That means you will have to
13 stay overnight for however long this trial lasts. I'm
14 going to ask you ladies, well, all of you; if you have
15 small children or something like that that that is
16 going to create a problem about? (No response) Okay,
17 any of y'all got any reason you cannot serve?

18 **BY THE JURORS:** No, sir.

19 **BY THE COURT:** Okay, raise your right hand.

20 (The Clerk swore three more jurors to try the
21 issues.)

22 **BY THE COURT:** Y'all need to go, just step, you
23 need to go in the Clerk's office. (To the Clerk) You
24 need to assign them a number, and can you determine
25 where they are, where they would be on the list?

26 **BY THE CLERK:** You want them put on the list by
27 the number?

28 **BY THE COURT:** I want them to be on the list in
29 relation to what their number would have been if they

Individual Voir Dire - JURY OUT

1 had been here, but we have probably already assigned
2 that number. So we will do it like we did Ms.
3 Townsend. It will be like 16A or 18A, and then we
4 won't take them in this process in that order, but
5 when we do the list again, then we will put them on
6 there that way. All right.

7 (Three jurors leave the courtroom with the Clerk,
8 Ms. Halfacre.)

9 **BY THE COURT:** Y'all all understand that?

10 **BY MR. DE GRUY:** Yes, Your Honor.

11 **BY THE COURT:** All right. Okay, Mr. Davis. Well
12 just a second.

13 INDIVIDUAL VOIR DIRE OF JUROR NO. 51, MR. JEFFREY EUGENE
14 DAVIS, BY THE COURT:

15 Q. Mr. Davis, have you heard anything about this case?

16 A. No more than back when it first happened.

17 Q. Okay. Do you know any of the people involved, the
18 victims or their families or Mr. Flowers or his family?

19 A. I know Mr. Flowers' family.

20 Q. How do you know them, sir?

21 A. Just through by everyday dealings.

22 Q. Okay, you see them pretty regular then?

23 A. Yes, sir.

24 Q. Have they ever talked to you about this case?

25 A. Never.

26 Q. Okay. Have you heard-- has anybody that purported
27 to be a witness or actually know the facts of this case
28 talked to you about it?

29 A. No, sir.

Individual Voir Dire - JURY OUT

1 Q. All right, the information you got, would that be
2 just street talk and gossip?

3 A. Yes, sir.

4 Q. Did you form any opinion as to the guilt or
5 innocence of Mr. Flowers based on what you heard?

6 A. No, sir, because I can't really say he did it
7 because I don't know.

8 Q. Okay. If you were seated as a juror in this case,
9 could you listen to the evidence that comes from the witness
10 stand and hear my instructions on the law and then render a
11 decision based on that regardless of what you have heard?

12 A. Yes, sir.

13 Q. Do you know of any reason that you could not be a
14 fair and impartial juror in this case?

15 A. No.

16 Q. All right, thank you, sir.

17 **BY THE COURT:** Mr. Evans.

18 **BY MR. EVANS:** Thank you, Your Honor.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. Good morning, Mr. Davis.

21 A. Morning.

22 Q. You stated that you are friends with some of the
23 Defendant's family?

24 A. Yes.

25 Q. Who all are you friends with?

26 A. Well, I know his father and his sister.

27 Q. And his father is Archie that works at Wal-Mart?

28 A. Yes.

29 Q. How do you know him?

Individual Voir Dire - JURY OUT

1 A. Like I say, just through by every day living around
2 here.

3 Q. Okay, you run into him pretty often?

4 A. Yeah.

5 Q. How long have you known him?

6 A. Quite a while. You know, knowing him throughout.

7 Q. Okay, do you know him--

8 A. Not personal, you know, not real close.

9 Q. How about the singing group he belongs to?

10 A. Well, I have heard him sing.

11 Q. So you know him from Wal-Mart; you know him from
12 his singing group. How about church?

13 A. Yes.

14 Q. You know him from church. Do you go to the same
15 church he goes to?

16 A. No, I don't.

17 Q. Has he been to your church?

18 A. Not as I can recall.

19 Q. Not even in the singing group?

20 A. Well, at my church you have programs. You know, I
21 don't go to church every Sunday. So you know, he might have
22 been there and I wasn't there.

23 Q. All right, you know him. And which sister do you
24 know?

25 A. Priscilla.

26 Q. How do you know Priscilla?

27 A. I used to work with her.

28 Q. Where was that?

29 A. Anel.

Individual Voir Dire - JURY OUT

1 Q. Anel?

2 A. Yes.

3 Q. How long did you work at Anel?

4 A. About a year and a half.

5 Q. What, did y'all work close together there?

6 A. Occasionally.

7 Q. She has got--

8 A. -- Sometimes we would work hand to hand.

9 Q. So you got to know her fairly well from work?

10 A. Yes.

11 Q. Any of the other family that you know?

12 A. Not close.

13 Q. Which ones do you know?

14 A. Just the two I named.

15 Q. Okay. You said not close. Do you know--

16 A. --I mean, you know, as far as just seeing them.

17 That's it. I don't really associate with a whole lot of
18 different people.

19 Q. Okay.

20 A. So, you know, in every day, just like--

21 Q. Do you know any of the rest of his family when you
22 see them?

23 A. Well, all of them features.

24 Q. Do you know all of them? Are you related in any
25 way to any of them?

26 A. No, I'm not. Not to my knowledge.

27 Q. Not related to the Flowers?

28 A. (Juror shakes his head.)

29 Q. Are you related in any way to any of the Forrests?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. How about the Campbells?

3 A. Yes.

4 Q. So you are related to the Campbells?

5 A. Yes.

6 Q. Which ones of the Campbells are you related to?

7 A. Well, I'm kin to Archie.

8 Q. And you know Archie is kin to him?

9 A. Well, see, it could be on a different side. I'm
10 kin to him on my mother's side.

11 Q. Okay. What other Campbells are you related to?

12 A. Well, that's, those, that's the only set that I
13 know about.

14 Q. So if that set is related to him, then you may be
15 related to him too; is that right?

16 A. It's possible on down the line. I don't know.

17 Q. Are you related to Laura Campbell?

18 A. Not to my knowledge.

19 Q. How about Essie Campbell?

20 A. No. See it's different sets of Campbells --

21 Q. --Johnny Campbell?

22 A. Like I said, I'm kin with Archie's set.

23 Q. Are you related to Johnny Campbell?

24 A. (Juror shakes his head.) Johnny?

25 Q. Uh-hum.

26 A. (Juror shakes his head.)

27 Q. How about Rosco Campbell?

28 A. (Juror shakes his head.)

29 Q. Roger Campbell?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. Bobby?

3 A. No.

4 Q. Robert?

5 A. No.

6 Q. So the only one that you know of that you are
7 related to is Archie?

8 A. Yeah.

9 Q. Okay. Now you understand that the process that we
10 are in now, as the Judge told you, is determining on this
11 particular case whether a juror should sit on this particular
12 case. That doesn't necessarily mean that a person wouldn't
13 make a good juror, but it may mean that because of
14 friendships or kinships and thing like that, that it would be
15 difficult to sit on one particular case. The fact that you
16 know members of his family, have worked with members of his
17 family, may even be related to members of his family, would
18 that make it difficult for you to sit on this particular
19 case?

20 A. It shouldn't, but like I said, the only thing I
21 oppose of is the death penalty.

22 Q. I know, and I'm going to get to that in just a
23 second.

24 A. So other than that, I have got to do what I have
25 got to do.

26 Q. And on your views on the death penalty, you are
27 against the death penalty?

28 A. That's right.

29 Q. And this is a capital case where one of the

Individual Voir Dire - JURY OUT

1 possible penalties is the death penalty. Are your views such
2 that you could not vote for the death penalty in any case
3 regardless of the law or what the facts were?

4 A. No, sir. That's a decision left to somebody else.
5 I can't.

6 Q. So no matter what the Judge told you the law was
7 and no matter what the facts, you yourself could not vote for
8 the death penalty?

9 A. Only thing I'm doing is telling you the truth.

10 Q. That's all we want, and nobody is judging your
11 views or anybody else's views. It's just where we are here
12 today. I appreciate it.

13 A. I understand.

14 INDIVIDUAL VOIR DIRE BY MR. CARTER:

15 Q. Now Mr. Davis, lots of peoples have scruples with
16 the death penalty and have a hard time with it and are not
17 sure about whether they could vote for it, and there are
18 people who would vote for it and there are people who
19 wouldn't vote for it. But do you understand in this case
20 that you may not even have to consider the death penalty?

21 A. Yes.

22 Q. If he is found not guilty, we won't even have to
23 deal with the death penalty. Now you understand that nobody
24 is asking you to vote for the death penalty. We are not
25 saying you have to vote for the death penalty. Do you
26 understand that?

27 A. I understand that.

28 Q. And you understand that you have an option, death
29 penalty or life. Do you understand that?

Individual Voir Dire - JURY OUT

1 A. Yes, I do.

2 Q. Now do you know that Mr. Flowers has a right to a
3 fair trial, and a fair trial involves a cross section of the
4 community?

5 A. Yes.

6 Q. And a cross section of the community--

7 BY MR. EVANS: -- I object. That is not proper.

8 BY MR. CARTER: That is proper.

9 BY THE COURT: I will let him ask. I don't know
10 what he is asking yet.

11 BY MR. CARTER:

12 Q. And a cross section of the community implies and
13 requires people of all ages, political affiliations, sexes
14 and races.

15 BY MR. EVANS: Which I object. That is not--

16 BY THE COURT: -- You are making a speech, Mr.--

17 BY MR. HILL: --You are making a speech--

18 BY THE COURT: --Wait, whoa, whoa. You are
19 making a speech, Mr. Carter. You have got to ask a
20 question.

21 BY MR. CARTER: I am asking -- okay, Your Honor.

22 BY MR. CARTER:

23 Q. Is it your understanding in order for Mr. Flowers
24 to get a fair trial, that he has a right to a cross section
25 of the community?

26 A. Yes, I think he ought to have a fair trial.

27 Q. And don't you also think he should have persons of
28 the community of all sexes, all ages, all races, political
29 affiliation and so on?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Your Honor, that is not proper
2 voir dire, and opposing counsel knows it's not proper.

3 **BY THE COURT:** Sustained.

4 **BY MR. CARTER:** Your Honor, we think it is
5 proper.

6 **BY THE COURT:** Well, I think it's not, and I
7 sustain the objection.

8 BY MR. CARTER:

9 Q. And sir, do you understand that in order for our
10 system to work--

11 **BY THE COURT:** -- You have got to ask questions.

12 BY MR. CARTER:

13 Q. --you have got to have jurors--

14 **BY THE COURT:** -- Mr. Carter, you have to ask him
15 questions that pertain to pertinent issues in this
16 case, and the pertinent issue mainly is whether or not
17 he can be a fair and impartial juror, not these
18 abstract questions about what ought to be. You need
19 to ask him things in particular. The reason we are
20 having individual voir dire is so you can ask him
21 about his feelings so we can determine whether he is a
22 fair and impartial juror. One of the things we have
23 to determine also is his feelings on the death
24 penalty. Those things are relevant. But these
25 questions you are asking are not, so you need to stay
26 on point.

27 **BY MR. CARTER:** Your Honor, just for the record,
28 these things that I am asking do go to whether or not
29 he could be a fair juror or not.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Well--

2 **BY MR. CARTER:** They go to his understanding of
3 what a fair juror is and whether he could actually be
4 one, but I will move ahead as the Court has asked me.

5 **BY THE COURT:** All right. Please do that.

6 BY MR. CARTER:

7 Q. Now you understand that there could be two phases
8 of the trial. There could be a guilt or innocent phase, and
9 there could be a separate phase which is a sentencing phase
10 where you have to decide whether this person gets the death
11 penalty or whether they get life if it gets there. Do you
12 understand that?

13 A. I understand that.

14 Q. And despite your scruples you may have about the
15 death penalty, can you tell us that you can listen to the
16 evidence with an open mind, that you can follow the Judge's
17 law as he gives it to you and the guidelines of the Court,
18 and make a decision based on the evidence?

19 A. I believe that I can have an open mind about it,
20 but if found guilty, like I say, I stand on what I said with
21 the death penalty. I'm against it.

22 Q. Okay. And by being against it, you are telling the
23 Court -- I just want to be clear -- that you couldn't, even
24 if the facts were there that the person committed an
25 intentional killing?

26 A. They have got to prove it beyond a reasonable
27 doubt.

28 Q. Right. If they proved it beyond a reasonable doubt
29 and we went to the second phase and there were mitigators put

Individual Voir Dire - JURY OUT

1 on, mitigating circumstances and aggravating circumstances,
2 and if the aggravating circumstances outweighed the
3 mitigating circumstances, you still could not vote for the
4 death penalty?

5 A. There is other ways of punishment besides death.

6 Q. Now you understand you don't have to vote for the
7 death penalty. You understand that?

8 A. I understand.

9 Q. So could you sit, despite your reservations about
10 it and scruples about the death penalty, could you sit and
11 make a decision whether to give life or death?

12 A. I can.

13 Q. Thank you.

14 BY MR. EVANS: Your Honor, that is not the proper
15 question.

16 BY THE COURT: Any further questions?

17 BY MR. EVANS: No, sir.

18 BY THE COURT: You may step down, Mr. Davis.
19 Thank you.

20 (Juror 51, Mr. Davis, leaves the courtroom.)

21 BY THE COURT: Mr. Evans?

22 BY MR. EVANS: Your Honor, I would object for
23 cause on this one.

24 BY THE COURT: Defense?

25 BY MR. DE GRUY: We think that his final answer
26 was he said he could sit and so he would be a proper
27 juror.

28 BY THE COURT: Okay, his final answer was in
29 response to an incorrect question. When the question

Individual Voir Dire - JURY OUT

1 as set forth in Witherspoon was presented to him, he
2 emphatically said he could not vote for the death
3 penalty, and he also renewed that in questioning by
4 Mr. Carter. Therefore, he is stricken for cause.

5 (To the Bailiff) You can take him that way and
6 tell him he can go. Marquis Kendle.

7 (JUROR NO. 52, MR. MARQUIS TORELL KENDLE, enters
8 the courtroom.)

9 **BY THE COURT:** Have a seat, Mr. Kendle.

10 INDIVIDUAL VOIR DIRE BY THE COURT:

11 Q. State your name, please, sir.

12 A. Marquis Torell Kendle.

13 Q. Mr. Kendle, do you know anything about this case?

14 A. What I read--

15 Q. -- You have got to speak up now so I can hear you.

16 A. From what I read in the newspaper.

17 Q. Okay. Have you ever talked to anybody about it?

18 A. A little.

19 Q. Okay, who was it that you talked to?

20 A. Different people.

21 Q. Okay. Have you ever talked to anybody who was like
22 a member of the victims' family or a member of Mr. Flowers'
23 family?

24 A. No, sir.

25 Q. You have just talked to folks in general in the
26 community?

27 A. Folks in general.

28 Q. Okay. And I believe you said you read it in the
29 newspaper?

Individual Voir Dire - JURY OUT

1 A. (Juror nods his head.)

2 Q. You have got to speak up so she can take--

3 A. Yes, sir.

4 Q. Okay. How about radio? Did you hear it on the
5 radio?

6 A. No, sir.

7 Q. Did you form any opinion about the guilt or
8 innocence of Mr. Flowers based on what you have heard?

9 A. No, sir.

10 Q. If you were selected on this jury and you were
11 seated as a juror over there, could you make your decision
12 based on the evidence that you heard from the witness stand
13 and the law that I give you at the end of this trial?

14 A. Yes, sir.

15 Q. Okay. Do you know of any reason that you couldn't
16 be fair and impartial in this case?

17 A. No, sir.

18 Q. Okay.

19 **BY THE COURT:** Mr. Evans.

20 **BY MR. EVANS:** Thank you, Your Honor.

21 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

22 Q. Good morning, Mr. Kendle.

23 A. Good morning, sir.

24 Q. Mr. Kendle, do you know the Defendant?

25 A. Yes, sir.

26 Q. How do you know him?

27 A. I grew up around him as a child, sir.

28 Q. Okay, so you have been around him most of your
29 life?

Individual Voir Dire - JURY OUT

1 A. Well, some. We moved and then the contact kind of
2 just....

3 Q. Okay. So you have known him since you were about
4 how old?

5 A. Probably about five or six.

6 Q. Okay. And you live on Knox Street now; is that
7 correct?

8 A. Yes, sir.

9 Q. 105 Knox?

10 A. Yes, sir.

11 Q. What other family members of the Defendant's do you
12 know?

13 A. I know his mother. I know his sisters. I know his
14 brother, his uncles.

15 Q. You pretty well know the whole family?

16 A. Yes, sir.

17 Q. And are pretty good friends with some of them?

18 A. Yes, sir.

19 Q. One of the things that we are here for at this part
20 of the trial is to try to see if we can find a jury that can
21 base its decision on what it hears in court and not based
22 upon friendships or kinships or things like that. Do you
23 think the fact that you are good friends with most of his
24 family would influence your ability to be fair and impartial
25 in this particular case?

26 A. No, sir.

27 Q. And you are saying that you could disregard the
28 fact that you are have known them all your life and been
29 friends with them?

Individual Voir Dire - JURY OUT

1 **BY MR. CARTER:** Your Honor, we object. He has
2 already answered that.

3 **BY THE COURT:** Overruled.

4 BY MR. EVANS:

5 Q. You may answer.

6 A. I don't think it would be hard; you know what I'm
7 saying, because it's about the evidence and the facts; you
8 know what I'm saying. And that right there is going to prove
9 he is innocent or guilty.

10 Q. Do you have an opinion at this point about his
11 innocence or guilt?

12 A. No, sir.

13 Q. What have you heard about this case?

14 A. Nothing much. I just heard he was accused of doing
15 a crime.

16 Q. Okay. Any of those family members talk to you
17 about it?

18 A. No, sir.

19 Q. None of them?

20 A. None of them.

21 Q. Mr. Kendle, have you had any run-ins with the law
22 that would cause you to not want to listen to things that law
23 enforcement officers or judges might tell you?

24 **BY MR. CARTER:** Your Honor, we object to that
25 question unless he has some factual basis for asking.

26 **BY THE COURT:** I think that is true, Mr. Evans.

27 **BY MR. EVANS:** Your Honor, I do.

28 **BY THE COURT:** Okay, why don't you ask him about
29 it then.

Individual Voir Dire - JURY OUT

1 BY MR. EVANS:

2 Q. Okay. Do you have a problem -- well, let me ask
3 you this. The Court may want me to go directly into it. Do
4 you have any problem following instructions that the judges
5 give you?

6 A. No, sir.

7 Q. Isn't it true that you have a warrant out for you
8 right now in Grenada for contempt of court for not following
9 a judge's instructions on appearing when you were supposed to
10 and paying fines that you were supposed to?

11 A. The only reason I wouldn't be able to pay the fine
12 is because right now I am unemployed, sir. If I was
13 employed, I would pay the fine.

14 Q. But the Judge told you to be in court, and you
15 didn't show you, did you?

16 A. I showed up. I couldn't show up at the time, and I
17 called in beforehand and let them know I couldn't show up.

18 Q. Are you aware that there is a warrant for you in
19 Grenada now?

20 A. I'm not aware of that. But if it is, I can solve
21 the situation because I know what they are looking for.

22 **BY THE COURT:** And the factual part of that is
23 not relevant. It's to whether or not it would
24 influence him in this case. So let's stick to that
25 point.

26 **BY MR. EVANS:** Your Honor, my view on this is
27 that if he will not follow one judge's instructions --

28 **BY THE COURT:** --Well, that may be what your
29 opinion is, and you may have a right to do something

Individual Voir Dire - JURY OUT

1 later in the case about it, but that is not what we
2 are doing right now. Right now you need to elicit
3 answers from him as to whether or not it would affect
4 him as being fair and impartial.

5 **BY MR. EVANS:** Yes, sir.

6 BY MR. EVANS:

7 Q. Is there anything about that that would affect you
8 in this particular case?

9 A. No, sir.

10 Q. Okay. What other family members of the Defendant
11 are you good friends with? How about the Forrest family?
12 The Forrest family?

13 A. I don't know them.

14 Q. You don't know the Forrests that sing?

15 A. I'm not associated with them.

16 Q. Do you know them?

17 A. I have heard of them; you know what I'm saying.

18 Q. Are you good friends with any of them?

19 A. No, not really.

20 Q. How about any of the Campbells?

21 A. Well, on the face to face basis, but other than
22 that, when I see them around, you know what I'm saying; we
23 barely even associate now.

24 Q. Which ones do you know face to face?

25 A. Um, I know the majority of them face to face when I
26 see them.

27 Q. The majority of them?

28 A. Yes.

29 Q. Okay, the same thing, you think the fact that you

Individual Voir Dire - JURY OUT

1 know him and the way it sounds, a whole lot of his relatives
2 would not influence you in this case?

3 A. (Juror shakes his head.) It shouldn't.

4 Q. Well, the question is not though shouldn't, because
5 I agree with you on that. The question is do you think it
6 could influence you?

7 A. No, sir.

8 BY MR. EVANS: Nothing further, Your Honor.

9 BY MR. DE GRUY: No questions, Your Honor.

10 BY THE COURT: No questions? All right, Mr.
11 Kendle, you may step down.

12 (Juror 52, Mr. Kendle, leaves the courtroom.)

13 BY THE COURT: Mary Lee, he can go with the
14 eleven, the other eleven.

15 BY THE BAILIFF: Okay.

16 BY THE COURT: If I get to directing traffic
17 wrong, now y'all correct me. I have got them going a
18 lot of different ways. Okay, James Haley.

19 (JUROR NO. 53, MR. JAMES DAVID HALEY, enters the
20 courtroom.)

21 INDIVIDUAL VOIR DIRE BY THE COURT:

22 Q. State your name, please, sir.

23 A. James D. Haley. David Haley.

24 Q. Mr. Haley, have you heard anything about this case?

25 A. Yes, sir.

26 Q. How is it that you got that information?

27 A. On, you know, television, newspaper.

28 Q. All right. Have you ever talked to anybody about
29 it?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Has anybody ever talked about it in your presence?

3 A. Not as I know of.

4 Q. Did you know any of the victims or their families?

5 A. Yes, sir.

6 Q. Who was it that you knew?

7 A. The Stewart, BoBo.

8 Q. How close were you to them?

9 A. I just knew them; I mean.

10 Q. Okay, have they ever talked to you about this
11 matter at all?

12 A. No, sir.

13 Q. How about Mr. Flowers? Do you know him or his
14 family?

15 A. No, sir, not really.

16 Q. When you say not really, what do you mean? Do you
17 know of them?

18 A. I know of his sister because she used to work with
19 me down at Anel down there.

20 Q. Okay.

21 A. That's the only reason I know of him.

22 Q. Based on what you have heard, have you formed an
23 opinion as to the guilt or innocence of Mr. Flowers?

24 A. Well, I really don't know. I really don't want to.

25 Q. Well, let me put it another way. If you were
26 selected on a jury in this case, could you listen to the
27 evidence that comes from the witness stand and take the
28 instructions that I give you on the law and then consult with
29 your fellow jurors and make your decision based on that

Individual Voir Dire - JURY OUT

without considering what you heard about this case?

A. I don't think so. I don't know. I really -- no. I couldn't.

Q. You couldn't?

A. No.

Q. So you have made up your mind then; is that right?

A. Yes, sir. You might as well say that.

Q. Would that keep you from being fair and impartial?

A. Yes, sir.

Q. Okay.

BY THE COURT: Mr. Evans?

BY MR. EVANS: No questions.

BY MR. DE GRUY: No questions.

BY THE COURT: Okay. Thank you, Mr. Haley.

(Juror 53, Mr. Haley, leaves the courtroom.)

BY THE COURT: Tell him he can go. Well, I say that. I got ahead of y'all. I assume that y'all--

BY MR. DE GRUY: Yeah.

BY THE COURT: The Court is going to excuse him for cause. Any objection?

BY MR. DE GRUY: No objection.

BY THE COURT: Vickie Curry.

(JUROR NO. 54, MS. VICKIE D. CURRY, enters the courtroom.)

BY THE COURT: Have a seat right here, please, ma'am.

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. Would you state your, name, please.

A. Vickie Curry.

Individual Voir Dire - JURY OUT

1 Q. Ms. Curry, have you heard anything about this case?

2 A. Yes, sir, when it first happened.

3 Q. All right. How did you get that information?

4 A. By word of mouth and on TV.

5 Q. By the word of mouth part of it, where did that
6 come from?

7 A. Just people in general in the street.

8 Q. Okay. Do you know Mr. Flowers?

9 A. No, I don't.

10 Q. Do you know his family?

11 A. I work with his sister Felicia.

12 Q. You do work with her?

13 A. I did at one time.

14 Q. Did you work with her at that time?

15 A. No, I was just in the hospital. We worked at the
16 same hospital, not together.

17 Q. Have they ever, anybody in his family ever
18 discussed this matter with you at all?

19 A. No, sir.

20 Q. How about the victims or their families?

21 A. No, sir.

22 Q. Okay. So basically you just got it -- I don't want
23 to put words in your mouth, but street talk and what you
24 heard on the media?

25 A. Yes, sir.

26 Q. Okay. Did you form an opinion from that as to the
27 guilt or innocence of Mr. Flowers?

28 A. I just wondered if it wasn't any proof, then I
29 didn't convict him guilty.

Individual Voir Dire - JURY OUT

1 Q. I'm sorry. Ma'am?

2 A. If it wasn't any proof, I didn't convict him guilty
3 on my own. No, I didn't.

4 Q. Okay. So you have not formed an opinion?

5 A. No, sir.

6 Q. If you were seated as a juror in this case, would
7 you listen to the evidence that comes from the witness stand,
8 take my instructions on the law at the end of the trial,
9 apply them to the facts, and consult with your fellow jurors
10 and reach your decision based on that rather than whatever
11 you might have heard or anything?

12 A. Yes, I would.

13 Q. Okay. Do you know, Ms. Curry, any reason that you
14 could not be fair and impartial in this case?

15 A. No, sir.

16 Q. Okay.

17 **BY THE COURT:** Mr. Evans.

18 **BY MR. EVANS:** Thank you, Your Honor.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. Good morning, Ms. Curry.

21 A. Good morning.

22 Q. I want to make sure I understood what you were
23 saying. You were saying if there wasn't any evidence. Are
24 you talking about in the things that you have heard you
25 didn't think there was any evidence?

26 A. At the time to me, I was wanting to know was there
27 any proof.

28 Q. Okay, and--

29 A. --when it happened--

Individual Voir Dire - JURY OUT

1 Q. --is that based on what you had heard in the
2 streets?

3 A. Yes, sir.

4 Q. So did you have an opinion at that time whether he
5 was guilty or innocent based on what you were hearing?

6 A. No.

7 Q. Okay. How long did you work with his sister?

8 A. Maybe a year.

9 Q. And that was at Anel's?

10 A. Sir?

11 Q. At Anel's?

12 A. Uh-uh. At the hospital.

13 Q. At the hospital?

14 A. I don't know if I was at Tyler Holmes or Grenada
15 Hospital. I have worked at both of them.

16 Q. Okay. And how long ago was that?

17 A. I don't know; maybe ten.

18 Q. I'm sorry?

19 A. Maybe ten years ago.

20 Q. Okay. Do you still see her every once in a while?

21 A. No, sir.

22 Q. Is that the only family member that you know?

23 A. Yes, sir.

24 Q. You have heard a lot of people in here yesterday
25 that said that they were related to him.

26 A. Uh-hum.

27 Q. Are you related to any of those people?

28 A. No, sir. I have no people in this county at all.

29 Q. Now the fact that you worked with his sister at one

Individual Voir Dire - JURY OUT

1 time and that you have heard things about this case in the
2 community; do you think that might influence your decision if
3 you were picked as a juror on this case?

4 A. No, sir.

5 Q. And you could disregard anything that you have
6 heard, and you could disregard the fact that you have known
7 his sister?

8 A. (Juror nods her head.)

9 Q. Listen to the evidence and base your decision of
10 guilt or innocence on the evidence that you have heard and
11 nothing else; is that right?

12 A. That's right.

13 Q. The Judge went into this some yesterday, but of
14 course, this is a capital murder case where one of the
15 penalties is the death penalty. Do you have any personal or
16 religious beliefs against the death penalty?

17 A. No, I don't.

18 Q. Okay. So if you sat on the jury and the jury
19 determined that he was guilty, you would have no problem in
20 the second phase considering the death penalty as one of the
21 possible penalties; is that correct?

22 A. Right.

23 Q. And if, in fact, the law authorized it and the
24 facts justified it, you could return a verdict of death?

25 A. Yes, sir.

26 Q. Okay, Ms. Curry, do you know any other reason of
27 your own, whatever it is, that you could not be fair and
28 impartial--

29 **BY MR. CARTER:** -- Your Honor, I object to that.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Yeah, I have asked that, and she
2 has answered it.

3 **BY MR. EVANS:** No further questions.

4 **BY MR. DE GRUY:** We have no questions.

5 **BY THE COURT:** Ms. Curry, you may step down.

6 (Juror 54, Ms. Curry, leaves the courtroom.)

7 **BY THE COURT:** (To the Bailiff) Put her in the
8 room. Take her to the room with the others.

9 Any objection to her?

10 **BY MR. DE GRUY:** No, Your Honor.

11 **BY MR. EVANS:** No, sir.

12 **BY THE COURT:** Okay. Gloria James.

13 (JUROR NO. 55, MS. GLORIA J. JAMES, enters the
14 courtroom)

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. State your name, please.

17 A. Gloria James.

18 Q. Ms. James, have you heard anything about this case?

19 A. No, sir-- yes, sir.

20 Q. How did you hear about it?

21 A. Just on the news.

22 Q. Okay. Have you had any discussions with anybody in
23 the community about it?

24 A. No, sir.

25 Q. Haven't heard any people talking about it or
26 anything like that?

27 A. No, sir.

28 Q. Okay, just on the news; is that correct?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. Did you form any opinion based on what you heard as
2 to the guilt or innocence of Mr. Flowers?

3 A. Can you repeat that, sir?

4 Q. Did you, based on what you heard or what you might
5 know about this case, or think you know about this case, did
6 you form an opinion as to the guilt or innocence of Mr.
7 Flowers?

8 A. No, sir.

9 Q. Okay. If you were seated as a juror in this case,
10 could you listen to the evidence that comes from the witness
11 stand, take my instructions on the law and apply them to the
12 evidence, and then consult with your fellow jurors and make
13 your decision based on that rather than what you might have
14 heard on the news or otherwise?

15 A. Yes, sir.

16 Q. Do you know of any reason that you could not be a
17 fair and impartial juror in this case?

18 A. No, sir.

19 **BY THE COURT:** Mr. Evans.

20 **BY MR. EVANS:** Thank you, Your Honor.

21 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

22 Q. Ms. Campbell, what have you heard about this case?

23 A. Basically you know, just, just the murder part.

24 Q. And what did you hear about that?

25 A. Just whatever they had on the news about, just
26 things they were saying. I just didn't really get into it.

27 Q. And you haven't talked to anybody about this--

28 A. -- no, sir.

29 Q. Where do you live?

Individual Voir Dire - JURY OUT

1 A. Kilmichael.

2 Q. And you are a Campbell now; is that right?

3 A. Yes, sir.

4 Q. All right. Of course, you heard--

5 BY THE COURT: -- I'm sorry. She shows on the--

6 BY A JUROR: --I'm sorry. Winona. I used to
7 live in Kilmichael. I live in Winona. Winona.

8 BY THE COURT: Oh, okay. They have got your name
9 on this list as Gloria James.

10 BY A JUROR: Gloria James Campbell.

11 BY THE COURT: Campbell, okay. Y'all need to
12 make that change.

13 BY MR. EVANS: Yes, sir.

14 BY MR. EVANS:

15 Q. And how long have you been married, Ms. Campbell?

16 A. Seven years.

17 Q. To Richard Campbell?

18 A. Yes, sir.

19 Q. And I think you probably heard yesterday that a lot
20 of the Campbells in this community are related to the
21 Defendant. Are you related to the Defendant over here
22 through your husband?

23 A. No, sir.

24 Q. Okay. Now is he a different set of Campbells than
25 most of the rest of them in the county?

26 A. Yeah, it's varieties. It's a variety of Campbells.
27 I don't know who is kin to who.

28 Q. Okay. Let me ask you about a few of the Campbells.
29 Do you know Johnny Campbell?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Rosco Campbell?

3 A. Yes, sir.

4 Q. Are you related, is he related to Rosco Campbell?

5 A. No, sir.

6 Q. How about Roger?

7 A. No, sir.

8 Q. Bobby?

9 A. No, sir.

10 Q. Robby?

11 A. No, sir.

12 Q. All right, so he is not with Christopher Campbell?

13 A. No, sir.

14 Q. So he is not related to that set of Campbells?

15 A. No, sir.

16 Q. Now what we are attempting to do is find a jury
17 that can disregard anything that they have heard about the
18 case, listen to the evidence, and decide this case strictly
19 on the evidence and nothing else, no outside factors at all.
20 If you are picked as a juror on this case, could you do that?

21 A. Yes, sir.

22 Q. Okay, now you hesitated just a little. Any doubt
23 in your mind that you could do that?

24 A. Could you repeat the question.

25 Q. What we are trying to do is find a jury that can
26 base their decision of guilt or innocence in the first part
27 on just what they hear in court and no outside influences.
28 Can you tell us that you can do that and that nothing that
29 you have heard and no outside influences would interfere in

Individual Voir Dire - JURY OUT

1 your decision?

2 A. Yes, sir.

3 Q. Okay. Now this is a capital murder case. The jury
4 in the first part will decide only one thing, and that is the
5 guilt or innocence of this Defendant. If the jury convicts
6 him, then we go into what is the second phase of it. You
7 understand that?

8 A. Yes, sir.

9 Q. In the first phase the penalty doesn't even enter
10 into what the jury is to consider. Can you tell us that you
11 will do that; in the first phase you will only consider guilt
12 or innocence?

13 A. Yes, sir.

14 Q. In the second phase the death penalty is one of two
15 options that the jury would have. The choices would be the
16 death penalty or life. Do you have any personal or religious
17 beliefs that would prohibit you from voting for the death
18 penalty if the Judge told you that the law allowed it and the
19 facts justified it?

20 A. I couldn't do it.

21 Q. You couldn't vote for the death penalty?

22 A. No, sir.

23 Q. Even under those circumstances?

24 A. No, sir.

25 Q. Okay, this is an important issue because that is
26 one of the possible penalties in this case. You are telling
27 us that you have either personal or religious beliefs against
28 the death penalty; is that right?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. And I'm not trying to pry, but is it your religious
2 belief, or is it just a personal belief?

3 A. Personal.

4 Q. And nobody is trying to judge your beliefs because
5 we all have our own beliefs, and there is nothing wrong with
6 that. But in this particular case are those beliefs so
7 strong against the death penalty that you could not yourself
8 vote for the death penalty even if the judge authorized it
9 and the facts justified it?

10 A. No, sir.

11 BY MR. EVANS: Nothing further, Your Honor.

12 BY MR. DE GRUY: Just a few questions.

13 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

14 Q. Ms. Campbell, I just, so that we are all clear
15 here, do you recall filling out the questionnaire, the five
16 page questionnaire that came with your summons?

17 A. Yes, sir.

18 Q. And on that questionnaire you were asked about your
19 personal or religious beliefs preventing you from voting for
20 the death penalty, and you answered no. Do you remember
21 that?

22 A. I must not have understood the question. I was in
23 a rush filling it out. I guess I must have didn't pay it no
24 attention.

25 Q. Okay. So we all understand you have opposition to
26 the death penalty?

27 A. Yes, sir.

28 Q. And when the Judge asked yesterday basically the
29 same question, you weren't one that raised your hand and said

Individual Voir Dire - JURY OUT

1 I'm opposed to the death penalty?

2 A. Yes, I thought about that. I sure did.

3 Q. Okay. And so are you telling us now that -- now
4 opposition to the death penalty is okay, and I'm not trying
5 to tell you that this is the case that there should be a
6 death penalty. But what we all need to know is whether these
7 beliefs you have are so strong that you could not set it
8 aside and consider imposing the death penalty if the State
9 not only proved to you beyond a reasonable doubt that the
10 person was guilty, but also proved at least one or more what
11 are called aggravating factors that makes it worse than just
12 a killing during a robbery. If they did that, would you be
13 able to set your personal beliefs aside and consider the
14 death penalty?

15 A. No, sir.

16 BY MR. DE GRUY: Nothing further, Your Honor.

17 BY THE COURT: Thank you, ma'am. You may step
18 down.

19 (Juror 55, Ms. James Campbell, leaves the
20 courtroom.)

21 BY MR. EVANS: Move to strike for cause.

22 BY THE COURT: Any objection?

23 BY MR. DE GRUY: No, Your Honor.

24 BY THE COURT: Okay. Strike her for cause. You
25 can tell her she can go home. Barbara Arendale.

26 (JUROR NO. 56, MS. BARBARA MITCHELL ARENDALE,
27 enters the courtroom.)

28 INDIVIDUAL VOIR DIRE BY THE COURT:

29 Q. State your name, please, ma'am.

Individual Voir Dire - JURY OUT

1 A. Barbara Arendale.

2 Q. Ms. Arendale, have you ever heard anything about
3 this case?

4 A. Yes.

5 Q. How did you hear that?

6 A. A little on the news, some paper, just people
7 talking.

8 Q. Okay, of the people talking was that general
9 community talk, or was it somebody that was a member of the
10 victims' families?

11 A. General community talk.

12 Q. Did you know the victim or the victims or their
13 families?

14 A. I knew Ms. Tardy only by going in her furniture
15 store. I did not know the other victims.

16 Q. So you have had no communication with anybody in
17 those families about this? Is that right?

18 A. No.

19 Q. Okay. How about Mr. Flowers; do you know him?

20 A. No.

21 Q. Do you know any of his family?

22 A. Um, I work at the hospital, and we have Flowers as
23 patients, but I don't know that they are his relatives, no.

24 Q. You don't know them personally then?

25 A. No.

26 Q. Have you had any conversations with anybody in his
27 family about this?

28 A. No.

29 Q. Okay. Based on what you have heard, Ms. Arendale,

Individual Voir Dire - JURY OUT

1 have you formed an opinion as to the guilt or innocence of
2 Mr. Flowers?

3 A. (Pause.) Uh, the fact that he has been convicted
4 twice.

5 Q. Yes, ma'am. Would that -- did you form an opinion
6 based on that?

7 A. Well, no, not really.

8 Q. Okay, would what you have heard and all keep you
9 from being a fair and impartial juror in this case?

10 A. I don't think so. No.

11 Q. If you were seated as a juror in this case, could
12 you listen to the evidence that comes from the witness stand,
13 take my instructions on the law at the end of the case, apply
14 it to the facts, consult with your fellow jurors, and then
15 decide the case on that rather than what you have read and
16 heard?

17 A. Yes.

18 Q. Do you think you could be a fair and impartial
19 juror?

20 A. Yes.

21 Q. Okay. Ms. Arendale, you didn't -- I asked the
22 question earlier about people who had any religious or
23 philosophical beliefs that would prohibit them from imposing
24 the death penalty. You didn't raise your hand at that point,
25 or at least my notes show you didn't. So I assume you didn't
26 have any religious or philosophical belief against that. Is
27 that correct?

28 A. No. That's correct.

29 Q. Let me ask you another question then. If you sit

Individual Voir Dire - JURY OUT

1 on this jury and the jury decides at the first phase of the
2 trial that the Defendant is guilty and returns a verdict in
3 that manner or in that form; then there will be a second
4 phase, as I told you earlier. At that second phase both
5 sides may put on new evidence, or they may adopt the evidence
6 that has already been put on. They may, the State in all
7 likelihood will put on some evidence of aggravating
8 circumstances in order to show that the death penalty is
9 warranted. The Defense may put on some evidence of
10 mitigation which is pretty well unlimited, though there are
11 some limitations, but there will be a lot of things about
12 Mr. Flowers or his life in mitigation as to why the death
13 penalty shouldn't be imposed. I will give a written
14 instruction to the jury that contains all those factors with
15 instructions for the jury to make some determinations after
16 considering all those factors before they can return a
17 verdict. Do you understand all that?

18 A. I understand that.

19 Q. Okay. If you get into that situation, would you
20 consider -- the options would be death or life. Would you
21 consider both of those options, or would you automatically
22 disregard the instruction I give you and those things and
23 automatically vote for the death penalty as opposed to life?

24 A. (Pause.) I would vote for the death penalty.

25 Q. Okay, would you just disregard my instruction and
26 not consider mitigating circumstances or consider life as a
27 possibility?

28 A. No. I think I still would vote for the death
29 penalty.

Individual Voir Dire - JURY OUT

1 BY THE COURT: Okay. Mr. Evans.

2 BY MR. EVANS: No questions.

3 BY MR. DE GRUY: No questions, Your Honor.

4 BY THE COURT: Thank you, ma'am.

5 (Juror 56, Ms. Arendale, leaves the courtroom.)

6 BY MR. DE GRUY: We would move for cause.

7 BY THE COURT: Okay. I strike her for cause.

8 She can go home. John Clay.

9 (JUROR NO. 57, MR. JOHN E. CLAY, enters the
10 courtroom.)

11 INDIVIDUAL VOIR DIRE BY THE COURT:

12 Q. State your name, please, sir.

13 A. John E. Clay.

14 Q. Mr. Clay, have you heard about this case?

15 A. Yes, sir.

16 Q. How did you hear about it?

17 A. Newspaper, talk, and just in general being here.

18 Q. Living in Winona?

19 A. In Winona.

20 Q. Okay. Have you ever discussed it with anybody that
21 was in-- well, let me go back. Did you know the victim, the
22 victims or their families?

23 A. I knew one or two of them.

24 Q. All right, who was that that you knew?

25 A. The Golden man. I knew him.

26 Q. Have you discussed this or have you discussed it
27 with his family, or have they discussed it with you?

28 A. No, it's not.

29 Q. Sir?

Individual Voir Dire - JURY OUT

1 A. It just wasn't something that I would just discuss.

2 Q. Okay, I understand that. I have just got to find
3 out what you know. I'm going to make a point in a minute,
4 but I have got to know first how you knew it. How about
5 Mr. Flowers? Do you know him?

6 A. I grew up with him.

7 Q. Would you say that y'all were friends?

8 A. Best friends.

9 Q. Best friends, okay. Would that fact affect you,
10 Mr. Clay, and keep you from being fair and impartial?

11 A. Yes, it would.

12 Q. Okay.

13 **BY THE COURT:** Mr. Evans?

14 **BY MR. EVANS:** Your Honor, I would reserve the
15 right to ask some further questions, but I don't think
16 it is going to be necessary.

17 **BY THE COURT:** Well.

18 **BY MR. CARTER:** If he is going to ask some more,
19 Your Honor, we would like to ask some more also. But
20 I don't think either one needs to ask any more.

21 **BY THE COURT:** Mr. Clay, let me ask you to step
22 out a minute. We will see if we can resolve this real
23 quick.

24 (Juror 57, Mr. Clay, leaves the courtroom.)

25 **BY MR. EVANS:** Your Honor, the State would move
26 for cause in that he has already said he could not be
27 fair and impartial.

28 **BY MR. CARTER:** Can I object to that?

29 **BY MR. DE GRUY:** No objection, Your Honor.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Tell Mr. Clay he can go home.

2 **BY MR. CARTER:** I would like to object to it, but
3 we can't.

4 **BY THE COURT:** Y'all still want to ask some
5 questions? Latoya Carodine.

6 (JUROR NO. 58, MS. LATOYA CANIECE CARODINE, enters
7 the courtroom.)

8 INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. State your name, please, ma'am.

10 A. Latoya Carodine.

11 Q. Okay, you need to speak loud enough for them to
12 hear you now; okay?

13 A. Okay.

14 Q. Ms. Carodine, have you heard anything about this
15 case?

16 A. No.

17 Q. Nothing at all?

18 A. (Juror shakes her head.)

19 Q. Did you even know it happened?

20 A. I don't know; all I know is that I heard something
21 about a furniture store. That's all I know.

22 Q. Okay. How long have you lived here?

23 A. Just about all my life.

24 Q. Okay, and you didn't hear anything about this when
25 it occurred?

26 A. (Juror shakes her head.)

27 Q. And you have not heard any talk about it since
28 then?

29 A. No. I don't watch too much TV.

Individual Voir Dire - JURY OUT

1 Q. Okay, what about folks in the community? You hear
2 anybody talk about it?

3 A. I don't listen to gossip.

4 Q. Okay, so you heard some gossip about it; right?

5 A. No.

6 Q. Oh, you didn't? Okay. Do you know Mr. Flowers?

7 A. No, sir.

8 Q. Do you know his family?

9 A. No, sir.

10 Q. Do you know, do you know who died at the furniture
11 store?

12 A. No, sir.

13 Q. Okay. Ms. Carodine, do you know of any reason that
14 you couldn't be a fair and impartial juror?

15 A. No, sir.

16 Q. If you were selected, could you listen to the
17 evidence that comes from the witness stand, get my
18 instructions on the law at the end of the case, apply that to
19 the facts as you see them, talk to your other jurors, and
20 then make your decision based on that?

21 A. Yes, sir.

22 **BY THE COURT:** Mr. Evans.

23 **BY MR. EVANS:** One moment, Your Honor.

24 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

25 Q. Ms. Carodine, where do you live?

26 A. Kilmichael, Mississippi.

27 Q. And you have lived there most of your life?

28 A. All my life.

29 Q. And you haven't heard anything about this case?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Okay. Where do you work?

3 A. At Choctaw Maid. Well, it's Tyson now.

4 Q. And who is your husband?

5 A. Michael Reed.

6 Q. Okay. Let me ask you this. I think it was in the
7 questionnaire, and we went over it. But I think you have
8 been asked about any family members that have been convicted
9 of a crime before. Do you have any family members that have
10 been convicted of crimes?

11 A. Not that I knows of.

12 Q. Has your husband?

13 A. No.

14 Q. And you have worked at Multicraft before?

15 A. Yes.

16 Q. Now some of the Defendant's family have worked at
17 Multicraft.

18 A. Who was that?

19 Q. I'm not sure whether it was Priscilla or Archie,
20 Jr. or Angela, but one of them worked at Multicraft.

21 A. Well, I worked on the night shift, and I don't know
22 nobody by that name.

23 Q. So you don't know anybody that worked out at
24 Multicraft?

25 A. No.

26 Q. Now according to your questionnaire, you read the
27 *Clarion Ledger* about two times a week?

28 A. Sometimes, on and off.

29 Q. And you haven't read anything about this case in

Individual Voir Dire - JURY OUT

the *Clarion Ledger*?

A. Not lately.

Q. Well, I'm talking about at all.

A. No. I mainly read the part where the horoscopes and the (unintelligible), in that area. I may read a few obituaries on and off.

Q. All right. Ms. Carodine, if you are picked as a juror on this case--

A. Yes.

Q. One of the things that I expect the Judge to tell you is that you are to disregard anything you may have heard or anything that you may have an opinion on; base your decision strictly on the evidence that comes out in the courtroom. Can you do that?

A. Yes.

Q. Do you have an opinion at this point as to the guilt or innocence of the Defendant?

A. No.

Q. Okay. If we go through that phase and the jury finds the Defendant guilty, then we go into a second phase. In that phase the Defendant will be facing one of two penalties, either the death penalty or life. Do you have any personal or religious beliefs that would keep you from voting for the death penalty yourself if the Judge told you in his instructions it was a proper penalty in this case and if the facts justified it?

A. Well, I don't too much believe in the death penalty, but if that's what have to happen, then.

Q. Well, we are not talking about anything that has to

Individual Voir Dire - JURY OUT

1 happen. What we are talking about at this point are what
2 your beliefs are. I notice on your questionnaire you put, "I
3 don't know." And I'm just trying to find out --

4 **BY MR. DE GRUY:** -- That is not what it says on
5 the questionnaire.

6 **BY THE COURT:** What does it say?

7 **BY MR. DE GRUY:** It says, "No, I don't." He is
8 mischaracterizing the questionnaire.

9 **BY MR. EVANS:** Okay, I read it wrong.

10 **BY MR. EVANS:**

11 Q. My question here today, and you said that you do
12 have some problems with the death penalty here in court
13 today; is that right?

14 A. Yes.

15 Q. Tell us a little bit about the problems you have
16 with the death penalty. Is it a religious belief or just a
17 personal belief?

18 A. It's more of a personal.

19 Q. Okay. And of course, all of this is important
20 because this is a possible death penalty case. What I need
21 to know and what the Court needs to know, if you are picked
22 as a juror and it gets to that point, could you follow the
23 Court's instruction, listen to the evidence; if the facts
24 justified it, could you yourself return a verdict of death,
25 or would you just automatically say well, it would have to be
26 life because I can't consider the death penalty?

27 A. Yes. I would have to say that.

28 Q. You would have to say that?

29 A. Yes.

Individual Voir Dire - JURY OUT

1 Q. That it would have to automatically be life because
2 you yourself could not consider the death penalty?

3 A. Yes.

4 BY MR. EVANS: Nothing further, Your Honor.

5 BY MR. DE GRUY: Just a few questions, Your
6 Honor.

7 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

8 Q. Ms. Reed.

9 BY THE COURT: Wait a minute. What is your name
10 again? Carodine, isn't it?

11 BY A JUROR: Oh, no.

12 BY THE COURT: Y'all have got different
13 information than I have got.

14 BY MR. DE GRUY: On the questionnaire she put
15 Reed, Your Honor. She was married seven months ago.

16 BY A JUROR: See my maiden name is Carodine, but
17 my married name is Reed.

18 BY THE COURT: You are a Reed now?

19 BY A JUROR: Yes.

20 BY THE COURT: Okay. I am just trying to keep
21 the record clear.

22 BY MR. DE GRUY:

23 Q. I want to make sure your answer is clear. When you
24 filled out the questionnaire and you were asked about your
25 beliefs on the death penalty, whether it would prevent you
26 from voting to impose it, you said no, I don't have any of
27 those beliefs. And then that's what you have been saying
28 yesterday when the Judge asked the question, and until the
29 last question, it sounded like that's what you were saying to

Individual Voir Dire - JURY OUT

1 Mr. Evans. So I just want to make sure you understand. We
2 are not asking you to vote on the death penalty right now;
3 that if you were to serve on a jury and you were convinced
4 along with eleven other jurors beyond a reasonable doubt that
5 a person was guilty, and we are just talking about your
6 general beliefs, not this particular case. You were
7 convinced that the person is guilty beyond a reasonable
8 doubt. Then you would go to a second phase of the trial. Do
9 you understand?

10 A. Yes.

11 Q. Now at the second phase the State may introduce
12 additional -- they will have to introduce additional evidence
13 or introduce evidence to show you that there is an
14 aggravating factor that makes that offense worse than just
15 the murder. Do you understand that?

16 A. In other words, you are saying in the second phase
17 they find him guilty?

18 Q. No. The first phase is where someone is found
19 guilty or not guilty.

20 A. Okay.

21 Q. It's the second phase is only to determine whether
22 a person is sentenced to life or sentenced to death.

23 A. Okay.

24 Q. Now before you can consider death, the State will
25 have to prove beyond a reasonable doubt that there is an
26 additional factor--

27 **BY MR. EVANS:** -- Your Honor, I object. That is
28 not correct.

29 **BY MR. DE GRUY:** They is absolutely the law, Your

Individual Voir Dire - JURY OUT

1 Honor. They have to prove aggravating factors beyond
2 a reasonable doubt.

3 **BY THE COURT:** Go ahead.

4 BY MR. DE GRUY:

5 Q. If they prove this additional factor, then the
6 Judge will tell you -- he is not going to ever tell you how
7 to vote. He is just going to tell you that the law allows
8 you to consider both punishments. And our question is if you
9 were on the jury, could you go back into the jury room and
10 honestly discuss the evidence that is presented at that
11 second phase with your other jurors and consider imposing a
12 death sentence?

13 A. Well, I don't really know.

14 Q. Okay.

15 A. I don't know.

16 Q. I know we have put you in the hot seat up there.
17 And it's not really fair, and we all understand that. But we
18 are not asking you to return a verdict right now. But we
19 need to find out whether, whether it's something that you --
20 we understand that you are opposed to the death penalty, and
21 a lot of people have strong feelings one way or another about
22 the death penalty. Our question is are these feelings such
23 that you could set them aside and consider the evidence in
24 the case?

25 A. Well, based on the evidence in the case, I would
26 have to base my opinion on or my fact to base, to find out
27 the real reason if he done it or he didn't do it.

28 Q. Now that is the first phase, and you are going to
29 know he did it because you and the other jurors will have

Individual Voir Dire - JURY OUT

1 found beyond a reasonable doubt that he did it. So that's
2 why I'm telling you that the second phase, there are
3 additional things to consider called the aggravating
4 circumstances and mitigating circumstances, the reasons they
5 think that the person should be sentenced to death and the
6 reasons we think that a person shouldn't be sentenced to
7 death, that their life should be spared. And the question is
8 could you be fair in that? Now you have told us, I can be
9 fair and listen to the evidence of whether or not he
10 committed a crime and make a decision.

11 A. Okay, so the question you are asking me now,
12 whether I think he should be--

13 Q. --No, we are not asking you what you think the
14 sentence should be right now. We are asking you--

15 A. --in the second phase.

16 Q. -- whether you could consider both, consider what
17 they have to say as to why they think he should get the death
18 penalty and also consider a life sentence and make your
19 decision based on the facts that come out in court?

20 A. Yes.

21 Q. And you could do that?

22 A. Yes.

23 Q. Even if it meant--

24 A. -- setting aside my personal opinion.

25 Q. And sentencing someone to death?

26 A. Yes.

27 BY MR. DE GRUY: That's all I have.

28 BY THE COURT: Okay, you may step down.

29 (Juror 58, Ms. Carodine Reed, leaves the

Individual Voir Dire - JURY OUT
courtroom.)

BY MR. EVANS: Your Honor, the State would move for cause. Not only a couple of times did she say that she could not do it, but she said she would have to automatically vote for life, which I think in either case, whether they say they automatically are going to vote for death or automatically are going to vote for life, that that makes it to where they cannot be a fair and impartial juror.

BY MR. DE GRUY: I think this juror was clear in her questionnaire, rather emphatic. She was clear with the Court's questioning. She was clear with Mr. Evans' questioning, and I think where he confused her was that she thought she was being asked for a verdict now. And I went through that in more depth than with most of these jurors, and she clearly said if she hears the evidence, she could sit down in the jury room and deliberate and consider both options. And she is clearly a qualified juror.

BY THE COURT: Okay, I don't know that she is the clearest one we have had up here, but I'm going to give her the benefit of the doubt on that, and I'm not going to strike her for cause. (To the Bailiff) She needs to go to the room. Archie Campbell.

(JUROR NO. 59, MR. ARCHIE LEE CAMPBELL, enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please.

A. Archie Campbell.

Individual Voir Dire - JURY OUT

1 Q. Mr. Campbell, do you know anything about this case?

2 A. Not really; no, sir.

3 Q. Okay. You are kin to some of these people, aren't
4 you? Kin to the Flowers?

5 A. Right.

6 Q. How close kin are you?

7 A. His mother and I are second cousins.

8 Q. Okay. Has this matter been discussed in the
9 family?

10 A. Not with me, no.

11 Q. Okay. Who has discussed it with you or talked
12 about it in your presence?

13 A. Nobody.

14 Q. How did you know about it then?

15 A. Well, I read it in the newspaper.

16 Q. And that is the only place you have gotten your
17 information?

18 A. Well, just hearsay, folks talking, you know, and
19 all.

20 Q. Okay. Who did you hear talking?

21 A. Just peoples in the street.

22 Q. Did you form an opinion as to the guilt or
23 innocence of Mr. Flowers based on what you heard?

24 A. No.

25 Q. If you were selected on this jury, could you listen
26 to the evidence that comes from the witness stand, take my
27 instructions on the law, apply them to the evidence, and
28 consult with your fellow jurors and then base your verdict on
29 what you have heard here that comes out in court rather than

Individual Voir Dire - JURY OUT

on what you have heard before?

A. Yes.

Q. Do you know of any reason you couldn't be a fair and impartial juror?

A. Well, because I am kin, related to him.

Q. You do not think you could not be fair and impartial?

A. No.

BY THE COURT: Mr. Evans?

BY MR. EVANS: No questions, Your Honor.

BY MR. CARTER: No questions.

BY THE COURT: Thank you, Mr. Campbell.

Mr. Campbell, you need to go out that door, please, sir.

(Juror 59, Mr. Campbell, leaves the courtroom.)

BY THE COURT: I'm going to strike him for cause. Any objection?

BY MR. EVANS: None.

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: Okay, he can go home. Florence Miers.

(JUROR NO. 60, MS. FLORENCE CARR MIERS, enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please.

A. Florence Miers.

Q. Ms. Miers, have you heard about this case?

A. Yes, sir.

Q. How did you hear about it?

Individual Voir Dire - JURY OUT

1 A. On TV and different ones talking about it.

2 Q. The different ones, I assume you mean people in the
3 community; is that correct?

4 A. Yes, sir.

5 Q. Were any of those folks related, that you heard it
6 from, related to either the victims or the victims' family or
7 Mr. Flowers?

8 A. Mr. Flowers, that's right.

9 Q. Okay, who in Mr. Flowers' family did you talk to?

10 A. Well, I don't know their names; just passing
11 through, you know, on the streets and different places, just
12 in conversations.

13 Q. Okay. Are you friends with the Flowers family?

14 A. Yes, sir.

15 Q. Okay. How close friends would you consider
16 yourself?

17 A. Well, I used to work with his mother, and I see her
18 from time to time at her job.

19 Q. Based on that friendship and what you have heard or
20 read in the newspaper or whatever, have you formed an opinion
21 as to the guilt or innocence of Mr. Flowers?

22 A. Yes, I have.

23 Q. All right. Would that opinion keep you from being
24 fair and impartial in this case?

25 A. I think it would.

26 BY THE COURT: Thank you, ma'am.

27 BY MR. EVANS: Nothing.

28 BY MR. CARTER: No.

29 BY MR. DE GRUY: No, sir.

Individual Voir Dire - JURY OUT

1 **BY MR. CARTER:** She said she couldn't be fair.

2 **BY THE COURT:** You may step down.

3 (Juror 60, Ms. Miers, leaves the courtroom.)

4 **BY THE COURT:** Okay, I'm going to strike her for
5 cause. Any objection?

6 **BY MR. EVANS:** None from the State.

7 **BY MR. CARTER:** None, Your Honor.

8 **BY THE COURT:** Okay, she may go home. Elsie
9 Rebecca Holifield.

10 (JUROR NO. 61, MS. ELSIE REBECCA HOLIFIELD, enters
11 the courtroom.)

12 INDIVIDUAL VOIR DIRE BY THE COURT:

13 Q. Would you state your name, please.

14 A. Elsie Rebecca Holifield.

15 Q. Ms. Holifield, have you heard anything about this
16 case?

17 A. Yes, sir.

18 Q. How did you hear about it?

19 A. The TV, the radio, the newspaper, word of mouth.

20 Q. The word of mouth, who did that come from?

21 A. Just different people I knew here in Winona. My
22 sister worked in Winona.

23 Q. Where do you live?

24 A. I live in Kilmichael.

25 Q. Ms. Holifield, did you know any of the victims or
26 the victims' families?

27 A. I know Benny Rigby, but that is the only one I
28 know, and I just know him when I see him.

29 Q. Okay. So you have never had any conversations with

Individual Voir Dire - JURY OUT

1 him about this?

2 A. No, sir.

3 Q. How about Mr. Flowers? Do you know him or any of
4 his family?

5 A. No, sir.

6 Q. Based on what you have heard -- although first, let
7 me go back. Could you classify what you have heard as being
8 street talk or gossip, or did it come from somebody that
9 purported to know actually what happened?

10 A. Oh, it would be street talk or gossip. It wouldn't
11 be anything that, you know, anybody knew anything really.

12 Q. Did you form an opinion as to the guilt or
13 innocence of Mr. Flowers based on what you have heard?

14 A. No, sir.

15 Q. If you were selected as a juror, could you listen
16 to the evidence from the witness stand, take my instructions
17 on the law at the end of the case, and apply them to the
18 facts, consult with your fellow jurors, and then reach a
19 verdict based on that rather than what you might have heard
20 or read?

21 A. Yes, sir, because I don't remember a whole lot
22 about what I have read or heard.

23 Q. Do you know any reason, Ms. Holifield, that you
24 could not be a fair and impartial juror?

25 A. No, sir.

26 Q. Okay. Now when I asked the question earlier to the
27 whole panel about the death penalty, you did not indicate
28 that you had any religious or philosophical belief in
29 opposition to the death penalty; is that correct?

Individual Voir Dire - JURY OUT

1 A. No, sir. I don't know that I could be the one that
2 said someone should die for something, but I have no
3 religious beliefs against it.

4 Q. Okay. If you sat on this jury, the only way, the
5 only way that the death penalty would come into play or any
6 penalty would come into play is if at the first phase of the
7 trial, the jury found beyond a reasonable doubt that Mr.,
8 unanimously found beyond a reasonable doubt that Mr. Flowers
9 was guilty. If that should occur, then at the second phase
10 of the trial, the State will put on some evidence described
11 as aggravating circumstances which would be for the purpose
12 of showing that the death penalty is warranted. The Defense
13 in all likelihood would put on mitigating evidence which
14 could be a lot of things about Mr. Flowers and his life and
15 things like that, that would be for the purpose of showing
16 that no, the death penalty should not be imposed. I will
17 give the jury a written instruction -- in addition to the
18 evidence that you will hear, I will give a written
19 instruction that tells the jury about aggravating and
20 mitigating circumstances and tells you what you have to do in
21 considering those things and the things that you have to do
22 and you have to consider before you can return a verdict. Do
23 you understand that?

24 A. Yes, sir.

25 Q. Okay. At that point in time, there would be, the
26 options would be the death penalty or life in prison. If at
27 that time after you, could you, would you consider one, the
28 instruction that I gave you, the evidence that is put on at
29 that particular time, and consider both options, or would you

Individual Voir Dire - JURY OUT

1 automatically vote for the death penalty?

2 A. I would not automatically vote for the death
3 penalty.

4 Q. Thank you, ma'am.

5 BY MR. EVANS: Thank you, Your Honor.

6 INDIVIDUAL VOIR DIRE BY MR. EVANS:

7 Q. Ms. Holifield, I don't know if my notes were wrong
8 or the Judge's.

9 A. I think his were.

10 Q. But I-- his were wrong? That's what I thought.

11 A. I'm afraid they were.

12 BY THE COURT: What?

13 BY MR. EVANS: She did answer that she had a
14 problem with--

15 BY A JUROR: --I said that I didn't have a
16 religious problem against it. I just--

17 BY THE COURT: --I have changed lists so much.
18 It's no telling--

19 BY A JUROR: --don't know if I could. I don't
20 know if I could say it.

21 BY THE COURT: Ms. Holifield, I did. I see it.
22 I was looking at the wrong list. I apologize.

23 BY MR. EVANS:

24 Q. And all of us have changed our lists up so much
25 that we can't keep up with what each other is saying, much
26 less all the jurors. But what we are trying to find out here
27 today is really what everybody's beliefs are. And the Judge
28 has just gone through all that with you. You understand that
29 there are two possible penalties, death penalty or life?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Nobody is trying to tell you at this point how you
3 would have to vote on anything. But what we are looking at
4 is we are trying to find a jury that in the first phase can
5 be fair and impartial, will listen to the evidence, and base
6 a decision strictly on the evidence and nothing else. In the
7 second phase, we are trying to find a jury that will be fair
8 and impartial, will listen to the law the Judge gives, the
9 facts that both sides may put on, will fairly consider both
10 options, and then based upon the law and the case could make
11 up their own mind at that point whether to give the death
12 penalty or life after talking with their other jurors. My
13 concern and what I need to ask you now is are your beliefs
14 such about the death penalty that you yourself could not vote
15 for the death penalty regardless of what the Judge told you
16 the law was or what the facts of the case were?

17 A. I don't know that I could. That's the reason I
18 stood up before. I don't know that I could say that someone
19 deserved the death penalty.

20 Q. Okay, and based on that, if you were picked as a
21 juror and got to the second phase, would your view be that
22 you would just have to automatically vote for life because
23 you yourself couldn't vote for the death penalty?

24 A. I wouldn't say it would be automatic. It would
25 depend upon all the circumstances, but it would be very
26 difficult to say the death penalty. It really would.

27 Q. And you are the only one that can answer this.
28 Could you yourself consider the death penalty and vote for
29 it -- and I have to go through these certain ways of asking

Individual Voir Dire - JURY OUT

1 it. But if the Judge instructed you that it was proper--

2 **BY THE COURT:** -- No, no. I'm not going to
3 instruct her that it is proper. I might instruct her,
4 I am going to instruct her that it might, that it will
5 be authorized.

6 BY MR. EVANS:

7 Q. Authorized. If the Judge instructed you that it
8 was authorized in this case and the facts of the case
9 justified it, could you yourself vote for the death penalty?

10 A. I guess I could.

11 Q. Okay.

12 **BY MR. DE GRUY:** We have no questions, Your
13 Honor.

14 **BY THE COURT:** Thank you, Mr. Holifield. You may
15 step down.

16 (Juror 61, Ms. Holifield, leaves the courtroom.)

17 **BY THE COURT:** Any objection to her?

18 **BY MR. EVANS:** No, sir.

19 **BY MR. CARTER:** No, sir.

20 **BY THE COURT:** Okay. Chinchona Eden. She goes
21 to the room.

22 (JUROR NO. 63, MS. CHINCHONA PERFEIT EDEN, enters
23 the courtroom.)

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. State your name, please, ma'am.

26 A. Chinchona Eden.

27 Q. Ms. Eden, have you heard about this case?

28 A. Yes, sir.

29 Q. How did you hear about it?

Individual Voir Dire - JURY OUT

1 A. News, the radio.

2 Q. Do you know any of the families involved?

3 A. Yes, sir. I work with his sister.

4 Q. Mr. Flowers' sister?

5 A. Yes, sir.

6 Q. You work with her now?

7 A. Yes, sir.

8 Q. Have you heard about this case from her?

9 A. No, sir.

10 Q. She hasn't talked to you about it at all?

11 A. No, sir.

12 Q. How long have you worked with her?

13 A. We have been there five years or more.

14 Q. And in that five years y'all haven't talked about
15 this?

16 A. No, sir.

17 Q. Do you know any of the victims or any of the
18 victims' family?

19 A. No, sir.

20 Q. Have you formed an opinion based on what you have
21 heard as to the guilt or innocence of Mr. Flowers?

22 A. No, sir.

23 Q. If you were selected on this jury, could you listen
24 to the evidence that comes from the witness stand and take my
25 instructions on the law and apply them to the facts, discuss
26 it with the other jurors, and make your decision based on
27 that rather than what you have heard about this?

28 A. Yes, sir.

29 Q. Okay. Do you know of any reason including your

Individual Voir Dire - JURY OUT

1 relationship with his sister that would keep you from being
2 fair and impartial in this case?

3 A. No, sir.

4 Q. Okay.

5 **BY THE COURT:** Mr. Evans.

6 **BY MR. EVANS:** Thank you, Your Honor.

7 INDIVIDUAL VOIR DIRE BY MR. EVANS:

8 Q. How are you doing, Ms. Eden?

9 A. All right.

10 Q. Ms. Eden, which sister do you work with?

11 A. Priscilla Ward.

12 Q. Doesn't he also have some other family members that
13 work out there?

14 A. He had a brother that was working there.

15 Q. That is Archie, Jr.?

16 A. Yes, sir.

17 Q. Did you know him?

18 A. Yes, sir.

19 Q. Or do you know him?

20 A. Yes, sir.

21 Q. And you have known his sister for at least five
22 years?

23 A. I went to school with his sister. We graduated in
24 1991 together.

25 Q. Okay, so you have known her forever?

26 A. Yes, sir, since the fifth grade.

27 Q. All right, how about the Defendant; do you know
28 him?

29 A. He went to Winona school also.

Individual Voir Dire - JURY OUT

1 Q. How long have you known him?

2 A. When I was in high school. He was in the class
3 with my cousin.

4 Q. What other family members do you know?

5 A. His younger sister. Well, I know most all of his
6 sisters.

7 Q. Okay. Would it be fair to say that you were a
8 friend of the family?

9 A. Yes, sir.

10 Q. Of course, one thing that we are attempting to do
11 right now is see which jurors may have connections with the
12 families, things like that, which jurors have heard different
13 things because where a person might make a good juror on one
14 case, they might not on another because of friendships,
15 kinships, things like that. Would the fact that you are good
16 friends with practically the entire Flowers family, would
17 that make it difficult for you to be fair and impartial in
18 this case since he is the one that is on trial?

19 A. Yes, sir.

20 Q. Okay. And because of the fact that you are close
21 personal friends with you might as well say the whole family,
22 would that cause you not to be a fair juror in this
23 particular case?

24 A. No.

25 Q. You have answered it both ways.

26 A. Well, due to, depending on the evidence. I could
27 be, you know, fair in both situations.

28 Q. Well, would you be able to disregard all of those
29 close friendships with his family?

Individual Voir Dire - JURY OUT

1 A. Yes.

2 Q. And you are telling us that that would not enter
3 into your decision of guilt or innocence?

4 A. No.

5 Q. Do you have an opinion at this point as to his
6 guilt or innocence? And I don't want to know what it is, but
7 do you have an opinion?

8 A. No, sir.

9 Q. Do you think it would be more difficult for you to
10 sit as a juror in this case than it would somebody that
11 didn't know the families of either of the victims or the
12 Defendant?

13 BY MR. CARTER: Your Honor, we object to that.
14 He has asked if she could sit and listen to the
15 evidence and disregard the fact that she knows the
16 Flowers. She has answered that.

17 BY THE COURT: I believe she has answered.

18 BY MR. EVANS: She has said that she is close
19 friends with every one of them, and I would just like
20 to--

21 BY THE COURT: No, you have asked, you have been
22 over that ground. She has answered it.

23 BY MR. EVANS:

24 Q. Now Ms. Eden, you have a relative in law
25 enforcement; is that correct?

26 A. Yes, sir.

27 Q. That is Ickret Bennett here in Winona?

28 A. Yes, sir.

29 Q. And you have also had family members that have been

Individual Voir Dire - JURY OUT

1 convicted; is that correct?

2 A. Yes, sir.

3 Q. Was it a brother?

4 A. Yes, sir.

5 Q. Is there anything about any of that that would
6 cause you any difficulty in this particular case?

7 A. No, sir.

8 Q. Ms. Eden, a couple of other areas that I would like
9 to go into with you.

10 **BY THE COURT:** I am sorry; wait a minute, ma'am.
11 What are you showing me?

12 (Ms. Eden handed a document to the Court.)

13 **BY A JUROR:** I had to go to justice court today
14 on a domestic violence charge.

15 **BY THE COURT:** Let me see that. (Pause while the
16 Court reads.) Okay, I will talk to you about that in
17 just a second.

18 BY MR. EVANS:

19 Q. Are you still working at KI?

20 A. Yes, sir.

21 Q. And does Priscilla still work there?

22 A. Yes, sir.

23 Q. Now I know you have said that y'all work together.
24 I'm not going to go into that part, but would you tell us a
25 little bit about y'all's working relationship there?

26 A. Well, I work in shipping, and she works in the bore
27 and nose line. I see her; I talk to her, and mainly she
28 works in one department, and I work in another.

29 Q. And you have talked about knowing the other members

Individual Voir Dire - JURY OUT

1 of the family. I would like for you to go into a little bit
2 more detail with me if you would about how you know them?

3 A. Well, I went to school with Priscilla. We was in
4 the same grade. We played basketball together. We graduated
5 in '91.

6 Q. Okay, and how about do you see her anywhere other
7 than at work now?

8 A. No. Well, I saw her at a class reunion.

9 Q. When was that?

10 A. '91 -- well, 2001.

11 Q. And you have basically talked about knowing the
12 whole family. What I would like for you to do is tell me
13 what family members you know and how you know them.

14 A. Well, her younger sister was in the grade with my
15 sister, and her other sister because they played ball with my
16 older cousins.

17 Q. And what are their names?

18 A. Uh, I was fixing to say Rex -- I'm sorry. Corey,
19 um, I can't think of her baby sisters' names. I'm sorry.
20 I'm so used to calling her Rex, but that is not her name.

21 Q. Do you know his mother?

22 A. Yes.

23 Q. How do you know her?

24 **BY MR. CARTER:** Your Honor, at this point I would
25 like to interpose an objection. I think it has been
26 clearly established that she knows the family, that
27 she has a friendship with them, and to continue to
28 just ask question after question is redundant and a
29 waste of time.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Overruled.

2 **BY MR. EVANS:** I think I am entitled to know
3 how--

4 **BY THE COURT:** --Go ahead.

5 **BY MR. EVANS:**

6 Q. All right, you may answer that. How do you know
7 his mother?

8 A. Well, I just know her mother because, well, I went
9 to a birthday party for Priscilla at her mother's house. I
10 know her when I see her, but I have never just conversated
11 with her, but I do speak to her whenever I see her.

12 Q. When did you go to the birthday party at their
13 house?

14 A. We was in sixth grade.

15 Q. Okay. When is the last time that you have been to
16 any of them's house?

17 A. In 2001. We had class reunion. One event was at
18 Priscilla's house.

19 Q. Okay. How about Archie Flowers, Sr., the
20 Defendant's father? Do you know him?

21 A. Yes, he works at Wal-Mart.

22 Q. Anything else that you have contact with him?

23 A. No. No more than seeing him and speaking with him.

24 Q. How about the singing group that he is in?

25 A. I know of the group, but I have never been to one
26 of their events.

27 Q. Okay, any church connections with any of them?

28 A. No, sir.

29 Q. And none of this would affect your decision?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 BY MR. EVANS: One second, Your Honor.

3 Q. I will be brief on this because I think you have
4 answered it, but I want to make sure that this is your
5 answer. Do you have any personal or religious beliefs that
6 would prohibit you from voting for the death penalty if the
7 law authorized it and the facts justified it?

8 A. Yes. I would vote against it.

9 Q. You do not believe in the death penalty?

10 A. No, I don't.

11 Q. All right. I want to go into that just a little
12 bit then. Is this a personal or a religious belief?

13 A. Yes. Religious.

14 Q. Religious belief?

15 A. Yes.

16 Q. Is it a strong religious belief?

17 A. Yes.

18 Q. Is that religious belief so strong that you
19 yourself could not vote for the death penalty in any case
20 regardless of the law or the facts?

21 A. Yes.

22 BY MR. EVANS: Nothing further, Your Honor.

23 BY MR. DE GRUY: Just a few questions.

24 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

25 Q. Ms. Eden, do you remember filling out the
26 questionnaire, the five page questionnaire that came with
27 your summons?

28 A. Yes, sir.

29 Q. On that questionnaire you were asked do you have

Individual Voir Dire - JURY OUT

1 any personal or religious beliefs that would prevent you from
2 voting to impose the death penalty if the facts justified,
3 and you said no. Do you remember that?

4 A. (Juror shakes her head.) Maybe I didn't understand
5 the question correctly.

6 Q. Okay, and we have talked about this. The Judge
7 asked some questions yesterday, and according to my notes,
8 you had not said yesterday that you couldn't ever consider
9 the death penalty. Is that?

10 A. Just I don't, I couldn't do it.

11 Q. So you are telling us now -- now we are not asking
12 you to vote for the death penalty or against the death
13 penalty right now.

14 A. Uh-hum.

15 Q. Okay, you understand that we are just trying to
16 find out how you feel. Are you telling us that on this
17 particular case you couldn't consider the death penalty, or
18 are you saying that if you were picked for a jury in any
19 case, found someone guilty beyond a reasonable doubt, guilty
20 of capital murder, that you would never consider the death
21 penalty?

22 A. No.

23 **BY MR. DE GRUY:** No more questions.

24 **BY THE COURT:** You may step down, Ms. Eden.

25 Thank you. Oh, wait, Ms. Eden. You had a note saying
26 something about you had to be in Justice Court. Tell
27 me about that.

28 **BY A JUROR:** Yes, sir. I have been. I already
29 been.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Here?

2 **BY A JUROR:** Yes, sir. They had it at City Hall.
3 I had come back.

4 **BY THE COURT:** Oh, okay. You have got to go back
5 up there?

6 **BY A JUROR:** No, sir.

7 **BY THE COURT:** You are through with that?

8 **BY A JUROR:** Yes, sir.

9 **BY THE COURT:** Oh, okay, fine. Thank you,
10 Ms. Eden.

11 (Juror 63, Ms. Eden, leaves the courtroom.)

12 **BY THE COURT:** To clarify that, I think she was
13 late; isn't that right? Wasn't she late?

14 **BY MR. DE GRUY:** Yes.

15 **BY THE COURT:** That's why she was late. She was
16 in Justice Court.

17 **BY MR. EVANS:** Move for cause.

18 **BY THE COURT:** And that's what the note was to
19 tell me -- it was from Justice Court saying she was.

20 **BY MR. EVANS:** Move for cause, Your Honor.

21 **BY THE COURT:** Any objection to that?

22 **BY MR. DE GRUY:** No objection.

23 **BY THE COURT:** Strike her for cause. She can go.
24 Teresa Rawls.

25 (JUROR NO. 64, MS. TERESA RUSSELL RAWLS, enters the
26 courtroom.)

27 **INDIVIDUAL VOIR DIRE BY THE COURT:**

28 Q. State your name, please.

29 A. Teresa Rawls.

Individual Voir Dire - JURY OUT

1 Q. Ms. Rawls, have you ever heard of this case?

2 A. Yes, sir.

3 Q. How did you hear about it?

4 A. I works at Wal-Mart, and the day it happened, I
5 guess right after it happened, we started receiving phone
6 calls at Wal-Mart about what had happened at Tardy Furniture
7 Company.

8 Q. Okay. Have you heard about it since then?

9 A. I reads a lot, so I read the paper.

10 Q. Okay. Did you hear about it on the radio?

11 A. Yes, sir. I heard about it on the radio.

12 Q. All right, did you ever hear about it on
13 television?

14 A. Yes, sir.

15 Q. All right. Now you work at this Wal-Mart here?

16 A. Yes, sir.

17 Q. All right, now Mr. Flowers' father works out there;
18 is that correct?

19 A. (Juror nods her head.)

20 Q. Do you know him very well?

21 A. Yes, sir.

22 Q. Have you and he ever discussed this matter?

23 A. No, sir.

24 Q. He ever discussed it around you?

25 A. No, sir.

26 Q. Okay, how well do you know Mr. Flowers' family?

27 A. Well.

28 Q. Okay. Would you consider yourself friends with
29 them?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Okay, have any of them ever discussed this with you
3 or in your presence?

4 A. No, sir.

5 Q. Now about the victims or their families; do you
6 know any of them?

7 A. I knew Robert Golden.

8 Q. Okay, and do you know his family?

9 A. Yes, sir.

10 Q. Has any of his family discussed this with you?

11 A. No, sir.

12 Q. Have you formed an opinion, after hearing all this,
13 have you formed an opinion as to the guilt or innocence--

14 A. Yes, sir.

15 Q. Of Mr. Flowers? All right. Would that opinion
16 keep you from being a fair and impartial juror in this case?

17 A. Yes, sir.

18 BY MR. EVANS: No questions, Your Honor.

19 BY MR. DE GRUY: No questions, Your Honor.

20 BY THE COURT: You may step down, ma'am.

21 (Juror 64, Ms. Rawls, leaves the courtroom.)

22 BY THE COURT: I'm going to strike her for cause.

23 Any objection?

24 BY MR. EVANS: No, sir.

25 BY MR. DE GRUY: No objection.

26 BY THE COURT: Let her go. James Miers.

27 (JUROR NO. 67, MR. JAMES EVERETT MIERS, enters the
28 courtroom.)

29 INDIVIDUAL VOIR DIRE BY THE COURT:

Individual Voir Dire - JURY OUT

1 A. How are you doing?

2 Q. How are you doing, Mr. Miers?

3 A. All right.

4 Q. State your name, please.

5 A. My name is James Miers.

6 Q. Mr. Miers, have you ever heard of this case?

7 A. Yes, sir.

8 Q. How did you hear about it?

9 A. Well, I read it, about it, and then I heard about
10 it, just people talking.

11 Q. Street talk and stuff?

12 A. (Juror nods his head.)

13 Q. Who did -- well, did you hear about it from anybody
14 that was either a family member of the victims or a family
15 member of Mr. Flowers?

16 A. I do not know. Just people just talk.

17 Q. Just general talk is what you heard?

18 A. Yes, sir.

19 Q. Do you know Mr. Flowers?

20 A. Not personally but.

21 Q. Do you know his family?

22 A. Some members.

23 Q. Who do you know in his family?

24 A. Well, not, uh, in general persons that I know. I
25 know some Flowers.

26 Q. Okay. Have any of them ever talked to you about
27 this?

28 A. No, sir.

29 Q. Correct me if I'm wrong, but I gather that what you

Individual Voir Dire - JURY OUT

1 have heard, it either came from the media or it came from
2 just community talk, street talk, or gossip; is that correct?

3 A. Yes, sir.

4 Q. Did you form an opinion as to the guilt or
5 innocence of Mr. Flowers based on what you have heard?

6 A. No, sir.

7 Q. Could you -- if you were seated as a juror in this
8 case, could you listen to the evidence that comes from the
9 witness stand, get my instructions on the law at the end of
10 the case, apply them to the facts, talk to your other jurors,
11 and then reach a decision based on those factors rather than
12 what you had heard prior to this case?

13 A. No, sir.

14 Q. You could not?

15 A. No, sir.

16 Q. Are you telling me that you could not be fair and
17 impartial?

18 A. Yes, sir.

19 Q. Okay.

20 **BY MR. EVANS:** No questions, Your Honor.

21 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

22 Q. Let me be sure I understand you, Mr. Miers. You
23 are saying that you have formed an opinion about this case?

24 A. Sir?

25 Q. You are telling us that you have already formed an
26 opinion?

27 A. Yes, sir.

28 Q. Okay, and that no matter what evidence you would
29 hear, that opinion is?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 BY MR. DE GRUY: No other questions.

3 BY THE COURT: Thank you, Mr. Miers. You may
4 step down.

5 (Juror 67, Mr. Miers, leaves the courtroom.)

6 BY THE COURT: I'm going to excuse him for cause.
7 Any objection?

8 BY MR. EVANS: None from the State.

9 BY MR. DE GRUY: No, Your Honor.

10 BY THE COURT: Velma Young.

11 (JUROR NO. 68, MS. VELMA R. YOUNG, enters the
12 courtroom.)

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. State your name.

15 A. Velma Young.

16 Q. Ms. Young, have you ever heard anything about this
17 case?

18 A. No, sir.

19 Q. Okay. How long have you lived here?

20 A. All my life.

21 Q. Okay. Do you recall when this happened?

22 A. I remember when it happened.

23 Q. Okay, so you heard about it then; is that correct?

24 A. Right. Right.

25 Q. How did you hear about it?

26 A. The news, the media.

27 Q. Have you ever heard anybody talk about it?

28 A. No.

29 Q. Okay. Do you know, did you know any of the

Individual Voir Dire - JURY OUT

1 victims?

2 A. Well, two of them.

3 Q. Which ones?

4 A. Ms. Tardy and Mr. Golden.

5 Q. Okay, did you ever do business with that store and
6 all?

7 A. Yes.

8 Q. Okay. Have you ever discussed this matter with any
9 members of their families?

10 A. No.

11 Q. Do you know Mr. Flowers?

12 A. I don't know him. I know of him, but I don't know
13 him.

14 Q. How about his family; do you know them?

15 A. I do know members of his family.

16 Q. Which members do you know?

17 A. I know his father. I know his mother. I know his
18 sister.

19 Q. All right, are you close friends with them?

20 A. No, I'm not close friends.

21 Q. Okay. Have they ever discussed this matter with
22 you?

23 A. No.

24 Q. Is there anything about what you have heard or any
25 relationships you might have with any of these people that
26 would keep you from being a fair and impartial juror for
27 either side in this case?

28 A. No.

29 Q. If you were seated as a juror, could you listen to

Individual Voir Dire - JURY OUT

1 the evidence that comes from the witness stand, take my
2 instructions on the law at the end of the case, apply them to
3 the facts and then discuss it with your fellow jurors and
4 reach a decision based on those factors rather than what you
5 might have heard earlier?

6 A. Oh, yeah, I could.

7 Q. You think you could be fair and impartial in this
8 case then?

9 A. Yes.

10 **BY THE COURT:** Mr. Evans.

11 **BY MR. EVANS:** Thank you, Your Honor.

12 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

13 Q. How are you doing, Ms. Young?

14 A. Fine.

15 Q. Just a few questions I want to go over. I want to
16 find out a little bit about your connection with the Flowers
17 family. How do you know the Defendant's father, Archie?

18 A. Just I work for the public, just by waiting on them
19 as customers.

20 Q. You work at the tax assessor's office; is that
21 correct?

22 A. Uh-hum.

23 Q. All right, and would that be true as far as his
24 mother and his sister?

25 A. Right.

26 Q. No other connection with the family?

27 A. Uh-uh.

28 Q. No church connection or anything like that?

29 A. No.

Individual Voir Dire - JURY OUT

1 Q. And is there anything about the fact that you do
2 know his family that would make it difficult for you to sit
3 on this particular case?

4 A. (Pause) It might would.

5 Q. You think it might enter into your decision?

6 A. Uh-hum.

7 Q. And of course, what we are getting at here today,
8 nobody is judging anybody on who they know, things like that,
9 but we are attempting to find a jury that can be fair and
10 impartial to both sides and nothing else interfere with their
11 decision. Is what you are telling us here today because of
12 knowing them and because of maybe other reasons, that you
13 feel that on this particular case you could not be a fair and
14 impartial juror?

15 A. I feel like I couldn't be.

16 Q. You feel like you couldn't?

17 A. Uh-hum.

18 BY THE COURT: I'm sorry; what was your answer,
19 ma'am? I didn't hear it.

20 BY A JUROR: I said--

21 BY THE COURT: --I just didn't hear what you
22 said.

23 BY A JUROR: Oh, okay. I said I felt like I
24 couldn't be.

25 BY THE COURT: Couldn't be. All right.

26 BY MR. EVANS:

27 Q. All right, and I want to real briefly go into one
28 other area. Yesterday I believe you said that you have
29 either a personal or a religious belief against the death

Individual Voir Dire - JURY OUT

penalty?

A. Right.

Q. Okay. Now, and I'm not trying to get real nit-picky with it, but is it based on your religious beliefs, or is it just a personal belief?

A. It's just a personal belief.

Q. Okay, is it a strong personal belief?

A. Uh-hum.

Q. Now you just do not believe in the death penalty?

A. Uh-uh.

Q. What this is, of course, as you know, is a case where the death penalty could be a possible punishment.

A. Right.

Q. The trial would be in two phases. The first phase would be strictly nothing but guilt or innocence. Of course, in that phase you are saying that you would have a problem because of connections with the family; is that correct?

A. That's right.

Q. Okay, and in the second phase one of the two options would be the death penalty, and one would be life. We would go through a complete separate phase. At that point the jury would have had to convict the defendant, or we wouldn't be in that phase. So at that point the jury would be looking at just the penalty, not guilt or innocence. Both sides can and probably would put on additional evidence. The State would put on some evidence. The Defense would probably put on some evidence in mitigation. We expect the Judge would give the jury new instructions on what they should do step by step. At that point if the Judge were to tell you

Individual Voir Dire - JURY OUT

1 that the law says that the defendant, that the law authorized
2 the death penalty as a possible penalty in this case and if
3 the facts in this case justified the death penalty, are your
4 views against the death penalty so strong that you yourself
5 could not vote for the death penalty?

6 A. That's right.

7 Q. Now I don't know if it was a case of not
8 understanding or what. I think on your original
9 questionnaire you put that you didn't have a problem with the
10 death penalty. Did you understand that question?

11 A. I may not have understood it. I didn't mean to put
12 that.

13 Q. Okay. But that is not correct; is that right?

14 A. Uh-uh.

15 Q. You could not yourself vote for the death penalty
16 regardless?

17 A. Uh-uh. Uh-uh.

18 BY MR. EVANS: Nothing further, Your Honor.

19 BY MR. DE GRUY: We have nothing, Your Honor.

20 BY THE COURT: Thank you, ma'am. You may step
21 down.

22 (Juror 68, Ms. Young, leaves the courtroom.)

23 BY THE COURT: All right, Mr. Evans?

24 BY MR. EVANS: Move for cause, Your Honor.

25 BY THE COURT: Any objection?

26 BY MR. DE GRUY: No objection.

27 BY THE COURT: She is stricken for cause. Irvie
28 Bays.

29 (JUROR NO. 70, MR. IRVIE LEE BAYS, enters the

Individual Voir Dire - JURY OUT
courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please.

A. Irvie Lee Bays.

Q. Mr. Bays, have you heard about this case?

A. Yeah.

Q. How did you hear about it?

A. Well, I live here in Winona. So I'm familiar.

Q. Community talk and that kind of thing?

A. Yeah.

Q. Did you know any of the victims in this case?

A. Yeah, I knew Robert.

Q. Mr. Golden?

A. Yeah.

Q. Has any of his family ever talked to you about
this?

A. No, sir.

Q. Do you know Mr. Flowers?

A. Yes, sir.

Q. How do you know him?

A. Very good.

Q. Very good?

A. Yeah.

Q. Do you know his family?

A. Yes, sir.

Q. Have any of them ever discussed this matter with
you?

A. No, sir.

Q. Did you read any newspapers or hear any radio or

Individual Voir Dire - JURY OUT

1 television about this?

2 A. No. I saw it on there last night. That is the
3 first time I saw it.

4 Q. Okay. When you say you knew Mr. Flowers good, kind
5 of explain to me what you are talking about.

6 A. I been knowing him and his family for quite some
7 time.

8 Q. Did you run around with him before this happened?

9 A. Never did run together but.

10 Q. Okay. Based on what you have heard and your
11 relationship with his family or your relationship with
12 Mr. Golden, is any of that such that it would keep you from
13 being a fair and impartial juror in this case?

14 A. Yes, sir.

15 Q. Okay. Have you formed an opinion about this,
16 Mr. Bays?

17 A. Yes, sir.

18 Q. Okay.

19 **BY THE COURT:** Mr. Evans.

20 **BY MR. EVANS:** No questions, Your Honor.

21 **INDIVIDUAL VOIR DIRE BY MR. DE GRUY:**

22 Q. Mr. Bays, just to make sure we are clear here, you
23 are saying that you formed an opinion, and you wouldn't be
24 able to listen to the evidence from the witness stand, set
25 your opinion aside, and make your decision based only on what
26 you hear in court?

27 A. No.

28 Q. You couldn't do that?

29 A. No.

Individual Voir Dire - JURY OUT

1 **BY MR. DE GRUY:** We have no other questions.

2 **BY THE COURT:** Thank you, Mr. Bays. You may step
3 down.

4 (Juror 70, Mr. Bays, leaves the courtroom.)

5 **BY THE COURT:** I'm going to strike him for cause.
6 Any objection?

7 **BY MR. EVANS:** No, sir.

8 **BY MR. DE GRUY:** No objection.

9 **BY THE COURT:** Catrena Bennett.

10 (JUROR NO. 71, MS. CATRENA LEE BENNETT CARPENTER,
11 enters the courtroom.)

12 INDIVIDUAL VOIR DIRE BY THE COURT:

13 Q. State your name, please.

14 A. Catrena Bennett Carpenter.

15 Q. Your last name is Carpenter?

16 A. Yes, sir.

17 Q. Ms. Carpenter, have you ever heard of this case?

18 A. Yes.

19 Q. How did you hear about it?

20 A. Just from other people, I guess.

21 Q. Street talk, community talk?

22 A. Yeah.

23 Q. Did you know any of the victims?

24 A. No.

25 Q. Did you know any of their families?

26 A. No.

27 Q. Do you know Mr. Flowers?

28 A. No.

29 Q. Do you know any of his family?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. Did you hear any of it on news media?

3 A. Yes.

4 Q. Either radio--

5 A. -- television.

6 Q. -- television or?

7 A. Newspaper.

8 Q. You did?

9 A. Uh-hum.

10 Q. Did you form any opinion based on what you have
11 read or heard as to the guilt or innocence of Mr. Flowers in
12 this matter?

13 A. I don't know.

14 Q. Okay, well.

15 A. I know that--

16 Q. -- Let me put it to you another way, Ms. Carpenter.
17 If you are selected as a juror in this case, could you listen
18 to the evidence that comes from the witness stand, take the
19 instructions on the law that I give you at the end of the
20 case, and apply those to the facts as you see them, discuss
21 these matters with your fellow jurors, and then return a
22 verdict based on what you have heard in here to the exclusion
23 of the other things that you have heard?

24 A. I could listen without any partiality, but I am
25 scared that the burden of proof is not going to be on the
26 State. It's going to be on the witness. That would probably
27 be it in any case. I don't know if I am capable of doing
28 innocent until proven guilty.

29 Q. Okay, one of the instructions I would give you--

Individual Voir Dire - JURY OUT

1 A. --yeah, I don't know if I can--

2 Q. -- that you must presume that he is innocent until
3 such time as the State puts on proof that proves his guilt
4 beyond a reasonable doubt. Are you telling me you could not
5 follow that instruction?

6 A. Probably. I have been socialized that he has been
7 guilty for so long that, not necessarily that I believe it
8 or, but I have heard it so long that I would just -- I don't
9 know. I don't know if I--

10 Q. -- You think then you would require him to put on
11 some proof, even though I would tell you that he didn't have
12 to?

13 A. Right. Yes.

14 BY MR. EVANS: No questions, Your Honor.

15 BY MR. DE GRUY: No questions.

16 BY THE COURT: Thank you, ma'am.

17 BY A JUROR: Thank you.

18 (Juror 71, Ms. Bennett Carpenter, leaves the
19 courtroom.)

20 BY THE COURT: I'm going to excuse her for cause.
21 No objection, is it?

22 BY MR. EVANS: No objection.

23 BY MR. DE GRUY: No objection.

24 BY THE COURT: Okay, she can go. Debbie Collins.

25 (JUROR NO. 72, MS. DEBBIE MURPHY COLLINS, enters
26 the courtroom.)

27 INDIVIDUAL VOIR DIRE BY THE COURT:

28 Q. State your name, please.

29 A. Debbie Collins.

Individual Voir Dire - JURY OUT

1 Q. Ms. Collins, have you heard anything about this
2 case?

3 A. Yes, sir; back when it happened I have.

4 Q. Okay, how did you get that information?

5 A. I guess from radio, TV.

6 Q. Did you know any of the victims?

7 A. Vaguely. I was not close to any.

8 Q. You were not friends?

9 A. I knew who they were. We are not friends.

10 Q. How about family, their family? Did you know any
11 of them?

12 A. Yes, sir. I know a couple of them.

13 Q. Have they ever discussed this matter with you?

14 A. No, sir, not at all.

15 Q. Did you know Mr. Flowers?

16 A. No.

17 Q. Do you know any of his family?

18 A. No, sir.

19 Q. So none of them have discussed it with you either?

20 A. No, sir.

21 Q. Is it, your source of information then is community
22 talk and media?

23 A. Yes, sir. That's all.

24 Q. Did you form an opinion based on what you have
25 heard as to the guilt or innocence of Mr. Flowers?

26 A. (Pause.) Yes, sir. I would have to say I did.

27 Q. Okay. Would that opinion preclude you from being a
28 fair and impartial juror on this case?

29 A. No, sir. I don't think it would.

Individual Voir Dire - JURY OUT

1 Q. Okay. Could you listen to the evidence that comes
2 from the witness stand, take my instructions on the law at
3 the end of the case and apply them to the facts as you see
4 them, talk to your other jurors, and then render a verdict
5 based on what you heard here in court rather than what you
6 had heard beforehand?

7 A. Yes, sir. I think I could.

8 Q. You think you could be fair and impartial?

9 A. Yes, sir.

10 Q. Okay.

11 **BY THE COURT:** Mr. Evans.

12 INDIVIDUAL VOIR DIRE BY MR. EVANS:

13 Q. Ms. Collins, before we get into that, I want to
14 cover the death penalty issue with you real quick.

15 A. Yes, sir.

16 Q. If I understood what you said yesterday, you said
17 you could never give a death verdict; is that right?

18 A. Yes, sir. I will say yes, sir.

19 Q. Do you still feel like that?

20 **BY THE COURT:** Well, let's put it to her in the
21 right context.

22 BY MR. EVANS:

23 Q. All right, let me ask you this. To start with, you
24 are against the death penalty; is that correct?

25 A. Yes, sir.

26 Q. Okay, are those strong feelings against the death
27 penalty?

28 A. (Pause.) I'm not sure how to answer that.

29 Q. Well, let me just ask you some other questions.

Individual Voir Dire - JURY OUT

1 A. Okay, if you will.

2 Q. Maybe that will help.

3 A. Yes, sir.

4 Q. As the Judge briefly kind of went into with the
5 jury yesterday, this is a capital murder case.

6 A. Yes, sir.

7 Q. The death penalty is a possible penalty in this
8 case. But to get to that point, it's a two phase trial. The
9 first phase deals strictly with guilt or innocence. The
10 second phase, if the jury convicts the defendant of capital
11 murder, we would go into a second phase. The State at that
12 point will put on aggravating factors for the jury to
13 consider.

14 A. Yes, sir.

15 Q. Those will be put on in an attempt to show that the
16 death penalty is an appropriate punishment. The Defense will
17 put on mitigating factors. That will be done in an attempt
18 to show that a life sentence is the appropriate punishment in
19 this case. After both sides have put on their proof, the
20 Judge will give the jury instructions. If the Judge in his
21 instructions tells the jury that they can consider the death
22 penalty as one of the two options, that it is a proper
23 penalty for them to consider as one of the two options, and
24 the jury goes back in to deliberate if you are on that jury,
25 can you follow those instructions and look at the evidence in
26 the case, and if the law authorizes it as a possible penalty
27 in this case and the facts justify it, could you yourself
28 vote for the death penalty?

29 A. Having given this a lot of thought--

Individual Voir Dire - JURY OUT

1 Q. Yes, ma'am.

2 A. --since we started yesterday, I think I could
3 answer honestly now that yes, I could.

4 Q. Okay. All right, I want to go back into what the
5 Judge was going into a few minutes ago. As I think you
6 understand at this point, in this trial or in any trial this
7 Defendant or any other defendant is presumed innocent.

8 A. Yes, sir.

9 Q. That is because the burden of proof is entirely on
10 the State of Mississippi. He doesn't have to prove anything
11 to the jury. Do you have any problem with that theory, that
12 everything that has to be proven to the jury has to come
13 through us?

14 A. No, I have no problem with that. No, sir.

15 Q. Okay. And based upon what you have told the Judge,
16 anything that you have heard about this case, can you
17 disregard that, listen to the facts as they come out in the
18 courtroom, and base a decision of guilt or innocence on what
19 comes out in the courtroom?

20 A. Yes, sir.

21 BY MR. EVANS: Nothing further, Your Honor.

22 BY MR. DE GRUY: No questions, Your Honor.

23 BY THE COURT: Thank you, ma'am. You may step
24 down.

25 (Juror 72, Ms. Collins, leaves the courtroom.)

26 BY THE COURT: Any objection to Ms. Collins?

27 BY MR. EVANS: Not for cause.

28 BY MR. DE GRUY: No, Your Honor.

29 BY THE COURT: She can go to the room. Joe

Individual Voir Dire - JURY OUT

1 Brisendine.

2 (JUROR NO. 73, MR. JOE STANLEY BRISENDINE, enters
3 the courtroom.)

4 INDIVIDUAL VOIR DIRE BY THE COURT:

5 Q. State your name, please, sir.

6 A. Stanley Brisendine.

7 Q. Mr. Brisendine, have you heard of this case, heard
8 about it?

9 A. Yes, sir.

10 Q. How did you hear about it?

11 A. Everywhere, friends.

12 Q. Street talk, gossip, that kind of thing?

13 A. (Juror nods his head.)

14 Q. You have to answer up where she can hear you.

15 A. Oh, yeah.

16 Q. Did you know any of the victims in this case?

17 A. Not personally. I knew one of them's son and one
18 of them's father.

19 Q. Okay. Are you friends with them?

20 A. I am friends with the lady's son.

21 Q. Did they ever talk to you about this case?

22 A. I was around in groups when it was mentioned with
23 them.

24 Q. How about Mr. Flowers? Do you know him or any of
25 his family?

26 A. No, sir.

27 Q. And I assume you saw, heard some radio or read some
28 newspaper and stuff about it; is that correct?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. Based on what you have heard and your relationship
2 with some members of the victims' family, did you form an
3 opinion as to the guilt or innocence of Mr. Flowers in this
4 matter?

5 A. Yes, sir.

6 Q. All right. Would that opinion keep you from being
7 fair and impartial?

8 A. I'm afraid it would.

9 Q. All right. Thank you, sir.

10 BY THE COURT: Mr. Evans?

11 BY MR. EVANS: No questions, Your Honor.

12 BY MR. DE GRUY: No, Your Honor.

13 BY THE COURT: Thank you, sir. You may step
14 down.

15 (Juror 73, Mr. Brisendine, leaves the courtroom.)

16 BY THE COURT: I'm going to excuse him for cause.
17 Any objection?

18 BY MR. EVANS: No, sir.

19 BY MR. DE GRUY: No, Your Honor.

20 BY THE COURT: Connie Pittman.

21 (JUROR NO. 74, MS. CONNIE R. PITTMAN, enters the
22 courtroom.)

23 INDIVIDUAL VOIR DIRE BY THE COURT:

24 Q. State your name, please.

25 A. Connie Frances Pittman.

26 Q. Ms. Pittman, have you heard anything about this
27 case?

28 A. Just in the newspaper.

29 Q. Okay. Do you know Mr. Flowers or his family?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. Do you know any of the victims or their families?

3 A. No.

4 Q. Where is it that you live, Ms. Pittman?

5 A. Highway 407, Winona.

6 Q. Okay, how far out of town is that?

7 A. About 3 miles.

8 Q. Okay. Did you form any opinion about this case
9 based on what you have heard as to the guilt or innocence of
10 Mr. Flowers?

11 A. No.

12 Q. Okay. If you were selected as a juror in this
13 case, could you listen to the evidence that comes from the
14 witness stand and take my instructions on the law at the end
15 of the trial, apply them to the facts as you see them, talk
16 with your other jurors, and then reach a verdict based on
17 that rather than what you might have heard?

18 A. Yes, I can.

19 Q. Ms. Pittman, do you know of any reason that you
20 could not be fair and impartial in this matter?

21 A. No, sir.

22 **BY THE COURT:** Mr. Evans.

23 INDIVIDUAL VOIR DIRE BY MR. EVANS:

24 Q. How are you doing, Ms. Pittman?

25 A. Fine.

26 Q. Ms. Pittman, you do not know the Defendant?

27 A. No, sir.

28 Q. How about members of his family?

29 A. No, sir.

Individual Voir Dire - JURY OUT

1 Q. Do you know Ms. Lola Flowers?

2 A. Um. Lola Flowers.

3 Q. You may have worked with her at one time?

4 A. Okay. No, sir.

5 Q. You don't know her?

6 A. (Juror shakes her head.)

7 Q. Do you know the Defendant's father, Archie Flowers,
8 that works at Wal-Mart?

9 A. Um. I seen him.

10 Q. Okay, you know him?

11 A. (Juror nods her head.)

12 Q. Do you know any of his brothers and sisters?

13 A. No, sir.

14 Q. You work at Sta-Home Health Agency now?

15 A. Yes, sir.

16 Q. And you have worked at Tri-County Home Health and
17 Tyler-Holmes Hospital?

18 A. Yes, sir.

19 Q. What have you heard about this case, Ms. Pittman?

20 A. I just read it in the newspaper. It was a murder
21 case and Curtis Flowers.

22 Q. Okay, and where do you live?

23 A. Winona.

24 Q. In town Winona?

25 A. 407.

26 Q. Okay, where does your mother live?

27 A. 407, Winona.

28 Q. Okay, have you talked with your mother about this
29 case?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Do you know what her opinion is or if she has an
3 opinion?

4 A. No, sir.

5 Q. But y'all live together?

6 A. Do I live with my mother? No, sir.

7 Q. I thought you said y'all both lived at 407.

8 A. She live on 407.

9 BY THE COURT: Highway 407.

10 BY MR. EVANS:

11 Q. Highway 407, okay. How far apart do y'all live?

12 A. Just close by.

13 Q. How often do you see her?

14 A. Every other day.

15 Q. Okay, Ms. Pittman, is there anything that you have
16 heard about this case or know about the people involved that
17 would cause you any difficulty being fair and impartial to
18 both sides in this case?

19 A. No, sir.

20 Q. Are you telling us that you could disregard
21 anything that you have heard, listen to the evidence, and
22 base your decision solely on the evidence that comes out in
23 court?

24 A. Yes, sir.

25 Q. Okay. And as the Judge has told you, this is a two
26 phase trial; that the death penalty may be a possible
27 penalty. Do you have any personal or religious beliefs that
28 would prohibit you from considering the death penalty?

29 A. No, sir.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED

421-576

VOLUME

11 of 21

EXHIBIT

ELECTRONIC DISK

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

=====

Curtis Giovanni Flowers v. State of Mississippi

=====

Betty W. Sephton, Clerk

=====

TRIAL COURT # : 2003-0071-CR

Individual Voir Dire - JURY OUT

1 Q. To expand on that just a little, do you have any
2 personal or religious beliefs that would keep you from
3 sitting in judgment of anybody regardless of what the penalty
4 was?

5 A. No, sir.

6 Q. Where do you go to church?

7 A. Mount Vernon.

8 Q. Do you know if any of the Defendant's family goes
9 there?

10 A. No, sir.

11 Q. Are you familiar with the Forrest brothers that
12 sing?

13 A. Yeah. Forrest brothers. Some.

14 Q. Are you related or close friends with any of them?

15 A. No, sir.

16 Q. You saw a bunch of folks yesterday raise their
17 hands that they were related to the Defendant. Are you
18 related to any of them, or do you know any of them well?

19 A. No, sir.

20 BY MR. EVANS: That's all we have, Your Honor.

21 BY MR. DE GRUY: I just have one question, Your
22 Honor.

23 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

24 Q. Ms. Pittman, kind of the opposite question that
25 Mr. Evans just asked you about the death penalty. He was
26 kind of explaining to you that it's a two phase process.
27 First, a person has to be found guilty, and then get to the
28 second phase. And so my question is you have told Mr. Evans;
29 you have told the Court that you could consider the death

FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY _____ D.C.

Individual Voir Dire - JURY OUT

1 penalty, and so of course, my question is could you also
2 consider a life sentence?

3 A. Yes, sir.

4 Q. You would listen to the evidence?

5 A. Yes, sir.

6 BY MR. DE GRUY: That's all I have.

7 BY THE COURT: Thank you, Ms. Pittman. You may
8 step down.

9 (Juror 74, Ms. Pittman, leaves the courtroom.)

10 BY THE COURT: Any objection to her?

11 BY MR. EVANS: Not for cause, Your Honor.

12 BY MR. DE GRUY: No, Your Honor.

13 BY THE COURT: She can go to the room. Justin
14 Smith Rabon.

15 (JUROR NO. 75, MR. JUSTIN SMITH RABON, enters the
16 courtroom.)

17 BY THE COURT: Have a seat.

18 INDIVIDUAL VOIR DIRE BY THE COURT:

19 Q. State your name, please, sir.

20 A. Justin Rabon.

21 Q. Mr. Rabon, do you know anything about this case?

22 A. Yes, sir.

23 Q. How did you hear about it?

24 A. I have got a friend of mine was a witness.

25 Q. Was a witness in this case?

26 A. Uh-hum.

27 Q. Okay. So you have heard from somebody that
28 purported to know the facts; is that correct?

29 A. Correct.

Individual Voir Dire - JURY OUT

1 Q. Did you form an opinion based on what you have
2 heard as to the guilt or innocence of Mr. Flowers?

3 A. Yes, sir.

4 Q. Would that opinion keep you from being a fair and
5 impartial juror?

6 A. Yes, sir.

7 BY MR. EVANS: No questions.

8 BY MR. DE GRUY: No questions.

9 BY THE COURT: All right, thank you, Mr. Rabon.
10 (Juror 75, Mr. Rabon, leaves the courtroom.)

11 BY THE COURT: I'm going to excuse him for cause.
12 Any objection?

13 BY MR. EVANS: None.

14 BY MR. DE GRUY: No objection.

15 BY THE COURT: He can go. Anne Austin.

16 (JUROR NO. 76, MS. ANNE ELIZABETH AUSTIN, enters
17 the courtroom.)

18 INDIVIDUAL VOIR DIRE BY THE COURT:

19 Q. State your name, please.

20 A. Anne Elizabeth Austin.

21 Q. Ms. Austin, have you ever heard anything about this
22 case?

23 A. Yes.

24 Q. How did you hear it?

25 A. Well, I first heard about it I was at work, and my
26 mother-in-law called me and told me that something had
27 happened down at Tardy Furniture. She had heard it on a
28 scanner. And I just heard things like over the radio and in
29 the paper.

Individual Voir Dire - JURY OUT

1 Q. Okay. Did you know any of the victims or their
2 family?

3 A. Yes. I know some of them.

4 Q. Who is it that you know?

5 A. I know the Rigbys. My son played baseball with
6 Bryan Rigby, and my son played baseball with BoBo Stewart.
7 And Roxanne is a friend of my brother and his wife.

8 Q. Okay. Have any of them ever discussed this matter
9 with you?

10 A. No.

11 Q. Do you know Mr. Flowers?

12 A. No.

13 Q. Do you know his family?

14 A. No.

15 Q. So they have never, nobody in his family has ever
16 discussed it with you either?

17 A. No.

18 Q. Is the conversation you heard about it just street
19 talk or gossip, or does it come from somebody that purports
20 to actually know what happened?

21 A. No, just street talk.

22 Q. Based on what you have heard and also based on the
23 relationship you have had with some of the victims' families,
24 have you formed an opinion about the guilt or innocence of
25 Mr. Flowers?

26 A. Uh, no, not on -- I mean you told us to put things
27 that were behind us behind us.

28 Q. Yes, ma'am. Okay, let me ask you the question this
29 way. If you were selected as a juror in this case, could you

Individual Voir Dire - JURY OUT

1 listen to the evidence that comes from the witness stand, and
2 at the end of the trial when I give you the instruction on
3 the law, apply those instructions to the facts as you see
4 them, and then discuss that with your fellow jurors and reach
5 a decision based on that evidence to the exclusion of what
6 you might have heard prior to this?

7 A. Yes.

8 Q. Could you also put aside your relationship with the
9 victims' families to the extent to where you could be fair
10 and impartial?

11 A. Yes.

12 Q. Do you feel if you had, if after hearing all the
13 evidence in this case, you found, that it was your decision
14 that you had to return a verdict in favor of Mr. Flowers,
15 would you feel embarrassed or anything when you ran into the
16 victims' family or feel like you had to explain anything to
17 them? To the point where it would affect your ability--

18 A. --I would maybe feel upset, but in the long run I
19 have to live with myself.

20 Q. Okay. Then I have asked you this, but I will ask
21 once more. Is there any reason you know that you could not
22 be fair and impartial to both sides in this case?

23 A. No.

24 **BY THE COURT:** Mr. Evans.

25 **BY MR. EVANS:** Thank you, Your Honor.

26 INDIVIDUAL VOIR DIRE BY MR. EVANS:

27 Q. Good morning, Ms. Austin.

28 A. Hi.

29 Q. We kind of went through this a little yesterday. I

Individual Voir Dire - JURY OUT

1 want to go just a little more. You understand at this phase
2 in this trial or in any trial, any defendant on trial is
3 presumed by law to be innocent?

4 A. Correct.

5 Q. That is because the State of Mississippi, through
6 the district attorney's office, must prove to the jury beyond
7 a reasonable doubt that he is, in fact, guilty before a jury
8 could convict. The defendant does not have to prove
9 anything. The State does.

10 A. Right.

11 Q. Do you have any problem with that theory of the
12 law?

13 A. No.

14 Q. Basically, what I want to get to, can you tell us
15 that anything that you have heard in the past you can
16 completely disregard, listen to the evidence as it comes out
17 in court, listen to the instructions that the Judge gives
18 you, and base your decision of guilt or innocence only on
19 what you hear in the courtroom and not let anything else
20 interfere with it?

21 A. Yes.

22 Q. Okay. And Ms. Austin, as we have kind of gone into
23 a little bit, this is a charge where a possible penalty is
24 the death penalty. There will be two options if it gets to
25 that phase. One will be the death penalty, and one will be
26 life. If the jury finds the Defendant guilty of capital
27 murder, we will go into a second phase. In that phase the
28 State will put on aggravating factors. What we will be doing
29 is putting on things that we are trying to convince the jury

Individual Voir Dire - JURY OUT

1 that the Defendant deserves the death penalty. The Defense
2 will be putting on what is called mitigating factors. That
3 will be things to try to justify to the jury that the proper
4 penalty should be life. After we have done that, the Court
5 will instruct the jury on what the proper law is in this
6 particular case, and only at that point is the jury supposed
7 to consider which penalty is appropriate. At that point if
8 the jury [sic] tells you that in this particular case the
9 death penalty is authorized as a possible penalty, can you
10 deliberate with the jurors, discuss the death penalty,
11 discuss life imprisonment, and base a decision on what you
12 hear in court and what your discussions with your other
13 jurors are?

14 A. Yes.

15 BY MR. EVANS: Nothing further, Your Honor.

16 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

17 Q. Ms. Austin, you answered on your questionnaire and
18 I think you answered yesterday that your mother was killed by
19 a drunk driver?

20 A. Correct.

21 Q. And I know from your questionnaire that after that
22 tragedy in your life, you went through grief counseling?

23 A. That's correct.

24 Q. On your questionnaire, when asked about that crime,
25 you put that he was only convicted of DUI?

26 A. Correct.

27 Q. Is that -- so you are obviously upset that he
28 wasn't punished to the full extent; is that correct?

29 A. Well, of course, I was at the time. Yes.

Individual Voir Dire - JURY OUT

1 Q. Is that something--

2 A. -- that he only received a first time DUI and there
3 was a death involved. Yes, I was upset.

4 Q. Where was that? Where was that case prosecuted?

5 A. Sunflower County.

6 Q. So it wasn't Mr. Evans?

7 A. Oh, no. No.

8 Q. Do you have any -- do you still have any animosity
9 towards the law enforcement?

10 A. No.

11 Q. Do you still have some resentment about the fact
12 that this person got off light?

13 A. Possibly.

14 Q. And I'm sorry to have to bring that up and ask you
15 about it, but my concern is, and I think you can appreciate
16 this; if you were selected on a capital murder jury and you
17 and the eleven other jurors reached a decision that the
18 person was guilty beyond a reasonable doubt, and then you
19 went into the sentencing phase, particularly with your life
20 experience, do you feel like you could listen to anything
21 that the defense might present, or do you feel like if the
22 person is clearly guilty of this crime and the death penalty
23 is authorized, it should only be the death penalty?

24 A. No, I don't feel that way, that it should only be
25 the death penalty. This is a separate -- we were instructed
26 that if you had sat on juries before, that that was in the
27 past, and each one is separate. Each trial is separate.

28 Q. And that is how judges and lawyers think of things,
29 but we also understand we are dealing with human beings.

Individual Voir Dire - JURY OUT

1 A. Right.

2 Q. It's more difficult to compartmentalize our lives
3 that way. Wouldn't you say?

4 A. Right.

5 Q. So my question is not what the law is because we
6 all know what the law is; at this point when you took your
7 oath yesterday, your oath was only to tell the truth. It
8 wasn't to hear the evidence--

9 A. Correct.

10 Q. -- and reach the decision. So I clearly understand
11 what you are saying is that you know the law is that a juror
12 would have to do this. So my question is, and you are the
13 only one who can answer this; do you feel like you could do
14 it?

15 A. Yes.

16 Q. Do you feel that this is something that you would
17 be, that your mother's death and particularly the fact that
18 the person responsible was not, not even convicted of that
19 death as a separate offense--

20 BY MR. EVANS: --Your Honor, I object. I think
21 that has been covered at least three times.

22 BY MR. DE GRUY: I have not asked the question
23 yet.

24 Q. The question is do you feel like if you are sitting
25 in the jury room and you are making this decision, would your
26 mother's death weigh on you?

27 A. No.

28 Q. You would be able to completely put that out of
29 your mind?

Individual Voir Dire - JURY OUT

1 A. (Juror nods her head.)

2 Q. Now you said your brother is friends with
3 Ms. Ballard?

4 A. My sister-in-law and brother. Correct.

5 Q. Do they visit in each other's homes? Are they
6 close friends?

7 A. Yes.

8 Q. And how long have they been friends?

9 A. They grew up together and went to school together.

10 Q. Have you known her your whole life too, Ms.
11 Ballard?

12 A. Well, I know her. She is younger than I.

13 Q. I wasn't going to ask that question.

14 A. I know her. Yes.

15 Q. Did -- and you said your kids played with?

16 A. My son was on a baseball team with Bryan Rigby and
17 BoBo Stewart.

18 Q. And have you had discussions with your son about
19 the death of his friend?

20 A. No.

21 Q. You never discussed that at the time?

22 A. Um, well, yes. We discussed it, but we didn't
23 discuss any type evidence or anything like that.

24 Q. Just, I would just assume it was obviously an
25 emotional time. It's a tragedy in his life too.

26 A. Right.

27 Q. And so that is my question, not whether you
28 discussed evidence or anything as it relates to Curtis
29 Flowers --

Individual Voir Dire - JURY OUT

1 A. Right.

2 Q. But as it relates to BoBo Stewart, did y'all have
3 discussions of dying?

4 A. Yes.

5 Q. And I imagine provided some emotional support for
6 your son?

7 A. Right.

8 Q. Do you believe that you can put that out of your
9 mind and decide the case just based on facts and not be
10 thinking about your son's friend?

11 A. Yes.

12 Q. And you can tell us that -- did you attend the
13 funeral?

14 A. No.

15 Q. Did your son?

16 A. Um, I'm not sure. I don't think so.

17 Q. And you are assuring us that you know without
18 question that you can set aside your personal feelings and
19 view this case just on the evidence?

20 A. Yes.

21 BY MR. CARTER: One moment, Your Honor.

22 BY MR. DE GRUY: I'm sorry, ma'am.

23 (Defense Counsel confer briefly.)

24 BY MR. DE GRUY:

25 Q. I'm sorry; were you going to?

26 A. There is one, one thing that I think I need to say.
27 Ms. Ballard, when we were going through this with my mother,
28 Ms. Ballard did come to court to support our family with my
29 brother and his wife. She was present.

Individual Voir Dire - JURY OUT

1 Q. And it just, she came to court with you to support
2 you--

3 A. -- not with me. She didn't come with us.

4 Q. With the family?

5 A. But she is close friends with my sister-in-law and
6 my brother.

7 Q. So while you were in court concerning the death of
8 your mother--

9 A. Correct.

10 Q. -- she was there--

11 A. Yes.

12 Q. --as emotional support to the family?

13 A. Right.

14 Q. And you still feel that you can sit on a jury?

15 A. I personally feel like I have to do the right
16 thing. I have to live with myself.

17 Q. And do you feel the right thing is getting on the
18 jury?

19 A. No. I didn't say that.

20 Q. I guess I'm not--

21 A. -- but I mean I feel, you know, if I am chosen, it
22 is my duty to serve. But I don't.

23 Q. And I understand that, and we are not, we are
24 not -- we have called many people. If we just wanted twelve,
25 we could have called the first twelve. The problem is that
26 we are all dealing with, is that there are some people
27 because of their knowledge of one person or the other or
28 their life experiences, that they may be a perfectly good
29 juror in most cases, but in a particular case that because of

Individual Voir Dire - JURY OUT

1 their life experiences, they just wouldn't be a good juror.

2 Do you agree with that?

3 A. Yeah, I agree with that.

4 Q. And the only person who knows that is that
5 individual juror.

6 A. That's true.

7 Q. And so we know that the law requires jurors,
8 expects jurors to do certain things, and I don't know if you
9 feel like you are supposed to answer that way because that's
10 the law and that you would want to do it. But what we are
11 trying to do is find out how you truly feel.

12 BY THE COURT: And I believe she has answered
13 that--

14 BY A JUROR: I have tried to.

15 BY THE COURT: -- about five or six times
16 already. I don't see how she can be much clearer than
17 what she said.

18 BY MR. DE GRUY:

19 Q. You don't feel like if you were serving on a jury--

20 BY MR. EVANS: --Your Honor, we have gone over
21 this.

22 BY MR. DE GRUY:

23 Q. -- that you were going to be there to provide the
24 support for Ms. Ballard that she provided for you when you
25 were in court?

26 A. I couldn't do that. I just have to live with
27 myself.

28 BY MR. DE GRUY: Thank you, Your Honor.

29 BY THE COURT: You may step down, Ms. Austin.

Individual Voir Dire - JURY OUT

(Juror 76, Ms. Austin, leaves the courtroom.)

BY THE COURT: What do y'all say to her?

BY MR. EVANS: No objection.

BY MR. CARTER: Your Honor, I believe she said--

BY MR. DE GRUY: -- Your Honor, she said that the victim's family in this case when she lost her mother, came to court and was emotional support for her family. And I understand what she said in answer to the questions. I don't believe under these circumstances that this lady can possibly serve on this case.

BY THE COURT: She was totally unequivocal in what she said, that she could be fair and impartial. She may be subject to peremptory, but she is not subject to cause based on those answers. So the motion to excuse her for cause is overruled or denied. She needs to go to the room. Katie Wade.

(JUROR NO. 77, MS. KATTIE MAE M. WADE, enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please.

A. Katie Wade.

Q. Ms. Wade, have you ever heard about this case?

A. Yes, sir.

Q. How did you hear about it?

A. Newspaper.

Q. I'm sorry?

A. Newspaper.

Q. Newspaper. Did you ever hear about it on the radio

Individual Voir Dire - JURY OUT

or television?

A. Yeah.

Q. Have you ever heard any talk about it?

A. Yeah.

Q. Who did you hear from on the talk?

A. Different employees.

Q. Where do you work?

A. Winona Manor.

Q. That is a nursing home?

A. Yes, sir.

Q. All right, do any of Mr. Flowers' family work there?

A. Yes, sir.

Q. Which one?

A. The mother.

Q. Okay. Did she talk to you about it?

A. No.

Q. Did you ever hear her talk about it?

A. No.

Q. Are you friends with the Flowers family?

A. The mother.

Q. Okay. Do you know Mr. Flowers?

A. No.

Q. Did you know any of the victims?

A. (Juror nods her head.)

Q. Which ones?

A. Ms. Tardy.

Q. Okay. Did you do business at that store?

A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. How long had you done business there, Ms. Wade?

2 A. Probably six years. Five or six.

3 Q. Have any members of the victim's family talked to
4 you about this?

5 A. No.

6 Q. Have you formed an opinion based on what you heard
7 as to the guilt or innocence of Mr. Flowers?

8 A. No.

9 Q. Have you formed an opinion based on your
10 relationship with his mother or your relationship with Ms.
11 Tardy?

12 A. His mother.

13 Q. His mother. You have formed an opinion?

14 A. Yes.

15 Q. Would that opinion keep you from being fair and
16 impartial in this case?

17 A. Yes, sir.

18 Q. Okay. Thank you, ma'am.

19 BY THE COURT: Mr. Evans?

20 BY MR. EVANS: No, sir.

21 BY MR. DE GRUY: No questions, Your Honor.

22 BY THE COURT: Thank you, Ms. Wade. You can step
23 down and go with the bailiff.

24 (Juror 77, Ms. Wade, leaves the courtroom.)

25 BY THE COURT: I'm going to excuse her for cause.
26 Any objection?

27 BY MR. EVANS: No, sir.

28 BY MR. DE GRUY: No, Your Honor.

29 BY THE COURT: Glenn Edwin Minyard.

Individual Voir Dire - JURY OUT

1 (JUROR NO. 79, MR. GLENN EDWIN MINYARD, enters the
2 courtroom.)

3 INDIVIDUAL VOIR DIRE BY THE COURT:

4 Q. State your name, please, sir.

5 A. Glenn Minyard.

6 Q. Mr. Minyard, have you ever heard about this case?

7 A. Yes, sir.

8 Q. How did you hear about it?

9 A. Just rumor in town and newspapers.

10 Q. Media and street talk?

11 A. Yes, sir.

12 Q. Do you know or did you know any of the victims?

13 A. Yes, sir.

14 Q. Which one?

15 A. Ms. Rigby.

16 Q. Okay. How well did you know her?

17 A. I went to school with her son really is the way I
18 knew them.

19 Q. Okay. Have you ever discussed this with any
20 members of the victim's family?

21 A. No, sir.

22 Q. Okay. Did you know Mr. Flowers? Or do you know
23 him?

24 A. No, sir, but I know his brother. I work with his
25 brother.

26 Q. Where is that?

27 A. Anel.

28 Q. What is his brother's name?

29 A. Archie.

Individual Voir Dire - JURY OUT

1 Q. Okay. You work with him now?

2 A. No, sir. Back in, at the time that it happened.

3 Q. Did you ever discuss it with him?

4 A. No, sir.

5 Q. Have you ever had any discussions or had anybody
6 discuss it around you who purported to be a witness or know
7 the facts of this case?

8 A. Could you repeat that, please.

9 Q. Have you ever had anybody discuss this matter with
10 you or in your presence who purported to be a witness to this
11 case or purported to actually know what the facts were, or
12 has any law enforcement ever discussed it with you?

13 A. No, sir.

14 Q. Based on what you have heard, Mr. Minyard, and your
15 relationship with one of the victim's families, have you
16 formed an opinion about this case as to the guilt or
17 innocence of Mr. Flowers?

18 A. Yes, sir.

19 Q. Would that opinion keep you from being a fair and
20 impartial juror in this case?

21 A. Yes, sir.

22 BY THE COURT: Mr. Evans.

23 BY MR. EVANS: No questions.

24 BY MR. DE GRUY: No questions, Your Honor.

25 BY THE COURT: All right, Mr. Minyard, you can
26 step down.

27 (Juror 79, Mr. Minyard, leaves the courtroom.)

28 BY THE COURT: I'm going to excuse him for cause.
29 Any objection?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** None.

2 **BY MR. DE GRUY:** No objection.

3 **BY MR. EVANS:** How far are we going to go, Judge?

4 **BY THE COURT:** Well, we are going to go a couple
5 more. We have got a long road to go, man. I'm going
6 to let you eat though, I promise.

7 **BY MR. EVANS:** I ain't worried about eating right
8 now.

9 **BY THE COURT:** Oh. Well, I'm not going into that
10 further either. We will do one more, and then we will
11 quit for lunch. Sandy Newman, Jr.

12 (JUROR NO. 81, MR. SANDY NEWMAN, JR., enters the
13 courtroom.)

14 INDIVIDUAL VOIR DIRE BY THE COURT:

15 Q. State your name, please, sir.

16 A. My name is Sandy Newman, Jr.

17 Q. Mr. Newman, do you know anything about this case?
18 Heard anything?

19 A. On the street, yeah.

20 Q. On the street?

21 A. Right.

22 Q. Did you hear, did you read any newspaper articles
23 about it?

24 A. Some, yeah.

25 Q. How about radio and television?

26 A. A little bit on television.

27 Q. Okay. In the street talk did you, was any of that
28 from the members of say, Mr. Flowers' family?

29 A. No.

Individual Voir Dire - JURY OUT

1 Q. How about, did you know any of the victims in this
2 case?

3 A. Yes.

4 Q. Who did you know?

5 A. I knew Mr. Golden.

6 Q. Did you ever hear about this from any of his
7 family?

8 A. No.

9 Q. Do you know Mr. Flowers?

10 A. Yeah.

11 Q. How well do you know him?

12 A. I watched him grow up.

13 Q. Okay. Were you friends or are you friends with the
14 family?

15 A. Somewhat. With the father.

16 Q. With his father?

17 A. Right.

18 Q. Have you ever discussed this with his father?

19 A. No.

20 Q. Based on what you have heard either from the media
21 or from street talk or however you heard it and based on your
22 relationship with either of the victims, of Mr. Golden's
23 family or Mr. Flowers' family, have you formed an opinion as
24 to the guilt or innocence of Mr. Flowers in this case?

25 A. No.

26 Q. If you were selected to serve on the jury, could
27 you listen to the evidence that comes from the witness stand,
28 take my instructions on the law at the end of the case, apply
29 them to the facts as you see them, discuss it with your

Individual Voir Dire - JURY OUT

1 fellow jurors, and then reach a verdict based on that rather
2 than what you have heard prior to this case?

3 A. I would rather not judge.

4 Q. I'm sorry?

5 A. I would rather not judge because of my religion.

6 Q. Are you telling me that you have a religious
7 belief--

8 A. -- right.

9 Q. -- that would prohibit you from passing judgment on
10 your fellow man?

11 A. Right.

12 Q. Okay.

13 BY THE COURT: Okay. Mr. Evans.

14 BY MR. EVANS: Thank you, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. EVANS:

16 Q. All right, Mr. Newman, a couple of different areas
17 I would like to go into with you. Of course, you said you
18 watched the Defendant grow up?

19 A. Right.

20 Q. So you have known him well all his life?

21 A. Mostly, right.

22 Q. And you are friends with his father?

23 A. Right.

24 Q. All right, those -- well, let me just go a little
25 further right there. Are you friends or do you know other
26 family members of his? His mother, his brother and sisters?

27 A. Right. Brother and sisters.

28 Q. So basically you know the whole family?

29 A. Right.

Individual Voir Dire - JURY OUT

1 Q. Know them pretty well?

2 A. Um, yeah, pretty well.

3 Q. Now part of what we are attempting to do here today
4 is get a jury that doesn't have outside influences and can
5 let just what they hear in court enter into their decision of
6 guilt or innocence.

7 A. Right.

8 Q. Do you think that because you watched the Defendant
9 grow up; you know him well; you know his family well; do you
10 think that would keep you from being able to be fair and
11 impartial in this particular case?

12 A. Yes.

13 Q. It would?

14 A. Yes.

15 Q. And because of that, in this, you know, and that
16 doesn't mean you couldn't be a good juror in other cases.
17 Because of that in this particular case, it would keep you
18 from being a fair and impartial juror?

19 A. Right.

20 Q. All right. And I want to go just a little bit
21 further. You have a personal belief that you shouldn't sit
22 in judgment of anyone?

23 A. Right.

24 Q. And in addition to that, you also stated yesterday
25 that you have a belief that it is against the death penalty?

26 A. Right.

27 Q. Is that belief against the death penalty so strong
28 that even if the Judge told you that the death penalty was
29 authorized in this case and the facts justified it, you

Individual Voir Dire - JURY OUT

1 yourself could not vote for the death penalty on any case?

2 A. I couldn't vote for it.

3 BY MR. EVANS: Okay. Nothing further, Your
4 Honor.

5 BY MR. DE GRUY: No questions, Your Honor.

6 BY THE COURT: You may step down, Mr. Newman.

7 (Juror 81, Mr. Newman, leaves the courtroom.)

8 BY THE COURT: I'm going to excuse him for cause.
9 Any objection?

10 BY MR. EVANS: None from the State.

11 BY MR. DE GRUY: No, sir.

12 BY THE COURT: Where have you got them, Holly?
13 All of them out there?

14 BY THE BAILIFF: Yes, sir.

15 BY THE COURT: Bring them in and let me tell them
16 we are going to go to lunch.

17 JURY PANEL ENTERS THE COURTROOM.

18 BY THE COURT: Ladies and gentlemen, as y'all can
19 see, we are moving on through it, but we have got a
20 few more hours to go. But we have reached a stopping
21 point for lunch. I'm going to let y'all go for lunch,
22 and if you would, be back at 1:15. I give you the
23 same instructions that I have given you before. You
24 are not to discuss this matter amongst yourselves or
25 allow anybody to discuss it in your presence or with
26 you. If anybody should try to do that, you should let
27 me know. I will see you back at 1:15.

28 (FOLLOWING THE NOON RECESS ON FEBRUARY 3, 2004,

29 INDIVIDUAL VOIR DIRE CONTINUED IN OPEN COURT WITH ALL COUNSEL

Individual Voir Dire - JURY OUT

AND THE DEFENDANT PRESENT:)

(JUROR NO. 82, MR. LARRY GENE HENRY, enters the courtroom.)

BY THE COURT: Are you Mr. Oliver?

BY A JUROR: No, Mr. Henry.

BY THE COURT: Mr. Henry. Okay, good. Have a seat there, please, sir.

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name for the record, please.

A. Larry Gene Henry.

Q. Mr. Henry, do you know anything about this case?

A. Yes, sir.

Q. All right. How did you get that information?

A. From the radio and television and newspaper.

Q. Have you ever talked to anybody about it or had anyone talk to you about it?

A. Years ago I have talked to a lot of people.

Q. All right, who was that?

A. Mostly family members. Brothers and father, stuff like that.

Q. Of the victims?

A. No, of my family.

Q. Of your family, okay. Based on what you have heard, Mr. Henry, have you formed an opinion about this case?

A. Yes, sir.

Q. Would that opinion keep you from being a fair and impartial juror?

A. Yes, sir. I believe it will.

BY THE COURT: Mr. Evans?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** No questions.

2 **BY MR. DE GRUY:** No questions.

3 **BY THE COURT:** Thank you, Mr. Henry.

4 **BY A JUROR:** Am I dismissed?

5 **BY THE COURT:** Well, I can tell you in a minute.
6 You can step down right now. I don't know where my
7 bailiffs are.

8 **BY A JUROR:** He was around on that side.

9 **BY THE COURT:** They will take you out that door,
10 Mr. Henry.

11 (Juror 82, Mr. Henry, leaves the courtroom.)

12 **BY THE COURT:** I'm going to excuse him for cause.
13 Any objection? He had also -- let me point out that
14 when they were all in here, he emphatically said that
15 he would automatically impose the death penalty.

16 **BY MR. EVANS:** I already had him marked out.

17 **BY THE COURT:** Okay. How about the Defense?

18 **BY MR. DE GRUY:** No objection.

19 **BY THE COURT:** Let's see where I am.

20 **BY THE BAILIFF:** Judge, excuse the bailiff; he is
21 slow.

22 **BY THE COURT:** That is all right. Who is this?

23 **BY THE BAILIFF:** Ms. Oliver.

24 (JUROR NO. 83, MS. LYNN GLENN OLIVER, enters the
25 courtroom.)

26 **BY THE COURT:** Okay, have a seat up here, Ms.
27 Oliver. Y'all need to tell Mr. Henry that he can go.

28 INDIVIDUAL VOIR DIRE BY THE COURT:

29 Q. Good evening. Would you state your name, please.

Individual Voir Dire - JURY OUT

1 A. Lynn Oliver.

2 Q. Ms. Oliver, have you ever heard anything about this
3 case?

4 A. Yes.

5 Q. How did you get that information?

6 A. Hearsay.

7 Q. Did you ever talk to anybody that was either in the
8 victims' family or a member of the family of Mr. Flowers?

9 A. Since it happened or right after?

10 Q. Any--

11 A. -- in other words, any--

12 Q. Any time?

13 A. No.

14 Q. You have not?

15 A. No.

16 Q. Okay. Then would the information that you -- you
17 have received some verbal information, some talk; is that
18 right?

19 A. Just -- right. Right.

20 Q. Was that community talk, street talk or gossip?

21 A. Yes.

22 Q. Did it come from anybody that purported to be a
23 witness or to know the facts of this case?

24 A. No.

25 Q. Did you hear any media coverage or either radio,
26 newspaper or television?

27 A. A little.

28 Q. Based on what you have heard, Ms. Oliver, did you
29 form an opinion as to the guilt or innocence of Mr. Flowers?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. If you were selected to sit on this jury,
3 Ms. Oliver, could you listen to the evidence that comes from
4 the witness stand, take my instructions on the law at the end
5 of the case, apply them to the facts, discuss that with the
6 other jurors, and reach a decision based on that information,
7 what you get from the stand and my law and the discussion
8 with the other jurors as opposed, and then set aside what you
9 heard previously on this case?

10 A. Yes.

11 Q. Do you know of any reason that you could not be a
12 fair and impartial juror in this case?

13 A. No.

14 Q. Are you kin to anybody involved in this case?

15 A. No.

16 Q. Okay.

17 **BY THE COURT:** Mr. Evans.

18 **BY MR. EVANS:** Thank you, Your Honor.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. Good evening, Ms. Oliver.

21 A. Hello.

22 Q. We sort of went through this yesterday. But you
23 understand at this phase in this trial or any trial this
24 Defendant or any other defendant is presumed to be innocent
25 at this phase of the trial. You understand that?

26 A. Yes, sir.

27 Q. And that is because the burden of proof is on the
28 State of Mississippi. We must prove to the jury beyond a
29 reasonable doubt that he is, in fact, guilty. He doesn't

Individual Voir Dire - JURY OUT

1 have to prove anything. That entire burden is on the State.
2 You don't have any problem with that theory of law, do you?

3 A. No.

4 Q. And as the Judge has kind of briefly gone into,
5 this is a capital murder case. Because it's a capital murder
6 case, there are two possible phases. The first phase deals
7 only with guilt or innocence. The second phase, if the jury
8 convicts the defendant of capital murder, deals with the
9 penalty. At that phase we expect that the State will put on
10 aggravating circumstances to show the jury that the death
11 penalty is the appropriate penalty. We expect that the
12 Defense will put on mitigating circumstances to show the jury
13 that life sentence is the proper penalty.

14 And after both sides have put on their evidence,
15 the Judge will instruct the jury on what steps it must take
16 to view the different evidence that has been presented, and
17 only at that point is the jury to determine, after discussing
18 the case with each other, what the proper penalty would be.
19 If you were picked as a juror, not only could -- well, you
20 have said you could be fair and impartial in the first stage.
21 Not only that, but could you also be fair and impartial in
22 the second phase, view the evidence, follow the Court's
23 instructions, and then base your decision on which penalty
24 you thought was appropriate at that time?

25 A. Yes, I could.

26 Q. And I think as the Court has kind of gone into with
27 you, it's important that you be fair and impartial, not that
28 you have your mind made up on any penalty before you go into
29 that phase. So could you go into it with an open mind,

Individual Voir Dire - JURY OUT

1 listen to the evidence, and only then make your decision as
2 to what the appropriate penalty should be?

3 A. Yes.

4 BY MR. EVANS: That's all we have, Your Honor.

5 BY MR. DE GRUY: Thank you.

6 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

7 Q. Ms. Oliver, you said that you had heard some
8 hearsay about the case. Could you tell us what it is you
9 have heard?

10 A. The hearsay is mostly just from the prior trials
11 before now and just a little bit of newspaper, and where I
12 live I don't get the regular channels. It's just a satellite
13 in the country where I live. So I don't see a lot of current
14 news media. You know, I wish I did, but I don't. As far as
15 local news and as far as specific evidence, I really have
16 just not followed this thing too, too closely.

17 Q. Okay. So you haven't heard--

18 A. -- since the beginning.

19 Q. Since the beginning, you haven't followed--

20 A. -- not really, uh-uh.

21 Q. So when you said you have heard things, this is
22 all, this is through the media?

23 A. (Juror nods her head.)

24 Q. Not in discussions?

25 A. Not in discussions, no.

26 Q. Now you said that you heard about the earlier
27 trial. Is that?

28 A. (Juror nods her head.)

29 Q. And you know we are going to try it again. Is that

Individual Voir Dire - JURY OUT

1 a problem--

2 A. -- just basically reading the -- oh, I thought you
3 were going to ask me where. I was reading the headline in
4 the paper. Was I aware of what? I'm sorry.

5 Q. Well, and you know we are going to try it again.
6 We are here to try it again.

7 A. Exactly.

8 Q. The fact that it has been tried before and it is
9 now coming back, is that a problem?

10 A. No, it's not.

11 Q. You are not going to wonder why?

12 A. No.

13 Q. Why are we going through this again?

14 A. No.

15 Q. Okay. Now you have indicated you support the death
16 penalty. You are in favor of the death penalty?

17 A. It's not necessarily that I'm in favor of it, but
18 it's not that I'm not opposed to it either. I just, I just
19 feel like what he said. I would just like to listen to the
20 evidence and see how things are presented and then make a
21 decision at that time. But as far as just a general question
22 whether I'm for or against, I, I don't have an answer for
23 that.

24 Q. Before you got subpoenaed to come to court, is it
25 something you had given much thought about at all?

26 A. No.

27 Q. And I guess other than lawyers, it's not something
28 people sit around and talk about.

29 A. Right.

Individual Voir Dire - JURY OUT

1 Q. And that's what you are telling us?

2 A. Right. I just haven't ever given it much thought
3 at all.

4 Q. Now Mr. Evans went through a little bit of what the
5 procedure is, and he told you that it doesn't end with just
6 finding someone guilty. If you find someone guilty of
7 capital murder, then we have another trial, another phase of
8 the trial.

9 A. Right.

10 Q. And are you telling us that you can go into that
11 second phase with an open mind towards either punishment and
12 wait until you hear the evidence?

13 A. That's correct.

14 BY MR. DE GRUY: That's all I have, Your Honor.

15 BY THE COURT: Thank you, Ms. Oliver. You may
16 step down.

17 (Juror 83, Ms. Oliver, leaves the courtroom.)

18 BY THE COURT: Any objection to her?

19 BY MR. EVANS: No, sir.

20 BY MR. DE GRUY: No, Your Honor.

21 BY THE COURT: Okay, she can go to the room.

22 Marvin Abel.

23 (JUROR NO. 84, MR. MARVIN ABEL, enters the
24 courtroom.)

25 INDIVIDUAL VOIR DIRE BY THE COURT:

26 Q. State your name, please, sir.

27 A. Marvin Abel.

28 Q. Mr. Abel, have you ever heard anything about this
29 case?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. How did you get that information?

3 A. Newspaper, radio, television, word of mouth, street
4 talk.

5 Q. Okay. Have you ever had any discussions with it
6 say from the victims' families?

7 A. With the victims' family?

8 Q. Yes, sir.

9 A. No, I have not.

10 Q. Do you know any of the victims or their family?

11 A. I knew Ms. Tardy on a business relationship, had
12 bought furniture from her.

13 Q. All right. Do you know Mr. Flowers or his family?

14 A. Yes, I do.

15 Q. Have you ever had any discussions with them?

16 A. No discussions. Your Honor, I did have a business
17 relationship with Mr. Flowers.

18 Q. With the Defendant?

19 A. Mr. Curtis Flowers.

20 Q. Okay. What was that?

21 A. I worked for a law firm in Kosciusko, Crawley Law
22 Offices.

23 Q. All right.

24 A. We represented him in an automobile wreck in 1994.
25 I was the investigator.

26 Q. Okay.

27 A. And I handled the investigation on his case.

28 Q. Okay. Was that matter over with by the time this
29 happened?

Individual Voir Dire - JURY OUT

1 A. I'm not real sure.

2 Q. Based on your relationship with him and on what you
3 have heard, Mr. Abel, have you formed an opinion as to the
4 guilt or innocence of Mr. Flowers in this matter?

5 A. No, sir.

6 Q. All right. If you were selected on the jury, could
7 you listen to the evidence that comes from the witness stand,
8 take my instructions on the law at the end of the case, apply
9 them to the facts as you see them, discuss that with your
10 fellow jurors, and then reach a verdict based on that rather
11 than your relationship with him or what you have previously
12 heard?

13 A. Yes.

14 Q. Do you know of any reason that you could not be a
15 fair and impartial juror on this case?

16 A. No reason other than my objection that I had
17 stated.

18 Q. About the death penalty?

19 A. About the death penalty.

20 Q. Okay. Well, let me just go ahead and ask you that,
21 Mr. Abel. I will ask you similar to how I asked it before.
22 Do you have a religious or philosophical belief against the
23 death penalty?

24 A. No, sir. It's something that I have wrestled with
25 a long time. I lost a 26 year old daughter to breast cancer
26 a couple of years ago, and life has become precious to me
27 now.

28 Q. So it's just a personal belief?

29 A. It's a personal belief.

Individual Voir Dire - JURY OUT

1 Q. All right. If, of course, this could be a two part
2 trial. I mean if you worked for a law firm, you understand
3 that part of it.

4 A. Yes, sir.

5 Q. At the first phase the jury must find the defendant
6 guilty beyond a reasonable doubt before there can be a second
7 phase.

8 A. Yes, sir.

9 Q. If there is a second phase, the State will put on
10 some more evidence concerning aggravating factors which
11 would, in an attempt to justify the death penalty. The
12 Defendant probably would put on some in mitigation of things
13 about Mr. Flowers or his life in order to ameliorate any
14 death penalty or death sentence on that thing or to influence
15 the jury not to do that. I would give a written instruction
16 along those lines telling the jury what they could consider
17 and how they should consider those things. And at any point,
18 at that point in time I would have determined that the law
19 authorizes the imposition of the death penalty if the jury so
20 desires.

21 And then my question to you is if I have
22 authorized, if I have told you that the law authorizes it and
23 you were to find that the facts justified it, could you
24 impose the death penalty?

25 A. No.

26 BY THE COURT: Mr. Evans?

27 BY MR. EVANS: No questions.

28 BY MR. DE GRUY: No questions.

29 BY THE COURT: Thank you, Mr. Abel.

Individual Voir Dire - JURY OUT

1 (Juror 84, Mr. Abel, leaves the courtroom.)

2 BY THE COURT: What says the State?

3 BY MR. EVANS: I move to strike for cause.

4 BY THE COURT: Any objection?

5 BY MR. DE GRUY: No objection.

6 BY THE COURT: Okay, he can go. Strike him for
7 cause. Herbert Roy Collins.

8 (JUROR NO. 85, MR. HERBERT ROY COLLINS, enters the
9 courtroom.)

10 INDIVIDUAL VOIR DIRE BY THE COURT:

11 Q. State your name, please, sir.

12 A. Herbert Roy Collins.

13 Q. Mr. Collins, first let me ask you something. Your
14 wife is on this panel?

15 A. Yes, sir.

16 Q. What is her name?

17 A. Debbie Collins.

18 Q. Do you remember what her number is?

19 A. 72.

20 Q. Do y'all have children?

21 A. Yes, sir.

22 Q. Okay, is there anybody to keep those children if
23 you are here? If both of you are here?

24 A. Yes, sir. Right now my son is in college, and my
25 daughter is at home. She is 15.

26 Q. Okay. Is that the only child at home?

27 A. Yes, sir. Well, they are both at home. He travels
28 back and forth to Grenada every day.

29 Q. How old is he?

Individual Voir Dire - JURY OUT

1 A. Twenty.

2 Q. Okay.

3 A. They can stay with their grandmother if they have
4 to.

5 Q. Okay. Mr. Collins, have you heard about this case?

6 A. Yes, sir.

7 Q. How did you hear about it?

8 A. The paper, TV, word of mouth.

9 Q. Okay. The word of mouth, did it come from anybody
10 that purported to know the facts of this case, or was it just
11 general conversation in the community?

12 A. General conversation.

13 Q. Did you know any of the victims?

14 A. Yes, sir. I did.

15 Q. Which one?

16 A. Carmen Rigby.

17 Q. Did you know her personally?

18 A. Yes, sir.

19 Q. Would you call her a friend?

20 A. Yes, sir.

21 Q. Did you know, do you know her family?

22 A. Yes, sir.

23 Q. Are they your friends?

24 A. I would call them my friends.

25 Q. All right. How about Mr. Flowers? Do you know
26 him?

27 A. No, I do not.

28 Q. Do you know any of his family?

29 A. I believe I know his father.

Individual Voir Dire - JURY OUT

1 Q. The one that works at Wal-Mart?

2 A. That's correct.

3 Q. Have any of these people discussed this matter with
4 you at all?

5 A. No, sir.

6 Q. Or in your presence?

7 A. No, sir.

8 Q. All right. Based on what you have heard, Mr.
9 Collins, and based on your relationship with Ms. Rigby and
10 her family, do you have an opinion as to the guilt or
11 innocence of Mr. Flowers?

12 A. No, sir. I do not.

13 Q. All right. If you were selected as a juror in this
14 case, could you listen to the testimony that comes from the
15 witness stand, take my instructions on the law at the end of
16 the case and apply them to those facts, then consult with
17 your fellow jurors, and reach a verdict based on that to the
18 exclusion of what you have heard and your relationships with
19 the Rigby family or your knowledge of say, Mr. Flowers'
20 family?

21 A. Yes, sir. I could.

22 Q. Do you know of any reason that you could not be a
23 fair and impartial juror?

24 A. No, sir.

25 **BY THE COURT:** All right, Mr. Evans.

26 **BY MR. EVANS:** Thank you, Your Honor.

27 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

28 Q. Good evening, Mr. Collins.

29 A. Evening.

Individual Voir Dire - JURY OUT

1 Q. As we have kind of been through with you, I want to
2 go into a little bit more detail. You understand at this
3 phase in this trial or in any criminal trial, this Defendant
4 or any defendant is presumed to be innocent, and that is
5 because the burden of proof is on the State of Mississippi to
6 prove to the jury that he is, in fact, guilty. You
7 understand that theory?

8 A. Yes, sir.

9 Q. And you don't have any problem with that theory of
10 the law?

11 A. No, sir.

12 Q. That burden is to the extent that the entire burden
13 of proving his guilt beyond a reasonable doubt is on the
14 State. He or his attorneys don't have to prove anything to
15 the jury. Do you agree with that?

16 A. Yes, sir.

17 Q. And where I'm going with that, and it's kind of in
18 line with what the Judge has said; what we need is a jury
19 that can disregard anything that they have heard or any facts
20 that they may know, listen to the evidence, sit in the jury
21 box, listen to the evidence, and base their sole decision of
22 guilt or innocence on what evidence comes out in open court
23 and only on that. Can you do that for us?

24 A. Yes, sir.

25 Q. As the Judge has kind of briefly gone into with
26 you, I believe yesterday morning, this is a capital murder
27 case, and because of that, it can be a two phase trial. The
28 first phase of the trial deals only with guilt or innocence.
29 The possible penalty isn't even supposed to enter into the

Individual Voir Dire - JURY OUT

1 jury's mind at that point. Can you tell us that if you are
2 picked as a juror on that first phase, you will listen to the
3 evidence, consider only guilt or innocence?

4 A. Yes, sir.

5 Q. All right. If the jury finds this Defendant
6 guilty, then we go into a second phase. And that penalty, in
7 that phase which sometimes is called the penalty phase, there
8 are two possible penalties. One is the death penalty; one is
9 life. The way that phase will work is that the State can put
10 on evidence. We expect to put on what is called aggravating
11 circumstances. That is to try to convince the jury that the
12 proper penalty should be the death penalty. The Defense then
13 can put on mitigating circumstances. That is an attempt to
14 try to show the jury that a life sentence is an appropriate
15 penalty in this particular case.

16 Once both sides have done that, then the Judge will
17 again read jury instructions to the jury, and in those
18 instructions it tells the jury step by step what the jury
19 must do, how they are to look at the aggravating factors, how
20 they are to look at the mitigating factors, and how they are
21 to reach a verdict. If you are picked as a juror, can you
22 tell us that you will not consider what penalty is
23 appropriate until you have heard from both sides; you have
24 heard the instructions of the Court and deliberated with your
25 other jurors; and then at that point decide after discussing
26 the case with the other jurors which penalty is appropriate,
27 either life or death?

28 A. Yes, sir.

29 **BY MR. EVANS:** Nothing further, Your Honor.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

Q. Mr. Collins, I just have to ask; if you and your wife were selected to serve on the same jury, do you think y'all would be able to deliberate along with the other jurors and talk to each other about the case?

A. Yes, sir. I don't foresee a problem there.

Q. I hope you understand why I am asking?

A. Very well.

Q. Now we have shared a little bit about how you could file the instructions of law on the death penalty, and I would just like to know a little bit how you feel about the death penalty. Can you tell us or do you consider yourself a supporter of the death penalty, or how do you feel?

A. Uh, I'm not 100 percent total on it, but I am a supporter of the death penalty if circumstances warrant it. I wouldn't enforce it if it's not needed.

Q. And as Mr. Evans said, the first phase of the trial is only going to be a question of whether or not a person is guilty or innocent or not guilty of capital murder?

A. (Juror nods his head.)

Q. And in Mississippi that is murder during the commission of another crime such as robbery. So when you say I would only enforce if it was needed, would the fact that someone you believe is guilty beyond a reasonable doubt of killing during a robbery, would that automatically be a case where you would--

A. No, sir, not automatically.

Q. You would be willing to look at other things?

A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. And these other factors may have nothing to do with
2 the case, the offense itself. It may be something that
3 happened before or after in a person's life that came
4 forward. Would you be able to consider any factor from a
5 person's background if the Judge instructed you this is
6 something you could consider?

7 A. Yes, sir. You have to look at all options before
8 you make a final determination because you are talking about
9 a person's life.

10 Q. Now when you -- did you ever -- this I know was big
11 news in Winona in 1996. Did you and your wife ever discuss?

12 A. Not to any great degree because I was traveling a
13 lot at that time.

14 Q. Have y'all had any discussions about it--

15 A. No, sir. As a matter of fact, when I received the
16 summons, I didn't even know that this trial was going to be
17 here at this time.

18 Q. Did y'all receive the summons on the same day?

19 A. Yes, sir.

20 BY MR. DE GRUY: I have no other questions.

21 BY THE COURT: Okay, thank you, Mr. Collins. You
22 may step down.

23 BY A JUROR: Thank you.

24 (Juror 75, Mr. Collins, leaves the courtroom.)

25 BY THE COURT: Any objection for cause?

26 BY MR. EVANS: No, sir.

27 BY THE COURT: To this juror?

28 BY MR. DE GRUY: No, Your Honor.

29 BY THE COURT: Okay. He can go to the room with

Individual Voir Dire - JURY OUT

1 Ms. Collins. John McBee Barbour.

2 (JUROR NO. 86, MR. JOHN MCBEE BARBOUR, enters the
3 courtroom.)

4 INDIVIDUAL VOIR DIRE BY THE COURT:

5 Q. State your name, please, sir.

6 A. John McBee Barbour.

7 Q. Mr. Barbour, have you ever heard anything about
8 this case?

9 A. Yes, sir.

10 Q. How did you get that information?

11 A. Just gossip, newspaper, been on the radio.

12 Q. Did you know any of the victims in this matter?

13 A. Not at the time it happened. I was new to Winona.

14 Q. Okay. Well, then you probably didn't know their
15 families either; is that correct?

16 A. That's true.

17 Q. Have you since come to know any of them?

18 A. Yes, sir.

19 Q. All right, which ones?

20 A. Frank and Roxanne Ballard and Benny Rigby.

21 Q. Okay. Have they ever discussed this matter with
22 you?

23 A. No, sir.

24 Q. Have they ever discussed it in your presence?

25 A. Not that I'm aware of. Not that I remember, no,
26 sir.

27 Q. How about Mr. Flowers? Do you know him?

28 A. No, sir.

29 Q. Do you know any of his family?

Individual Voir Dire - JURY OUT

1 A. Not that I'm aware of. No, sir. I know some
2 Flowers in the community but don't really know them, no.

3 Q. Did you live here when this occurred?

4 A. Yes, sir.

5 Q. How long had you lived here then?

6 A. About four years. My wife is from here originally.
7 We moved here about four years before that.

8 Q. All right. I assume you saw some newspaper
9 coverage, some radio and television about it; is that
10 correct?

11 A. Yes, sir.

12 Q. All right. And other conversations you heard about
13 it was street talk; is that correct?

14 A. Yes.

15 Q. Okay. Did you form any opinion based on what you
16 heard or read as to the guilt or innocence of Mr. Flowers?

17 A. Well, from everything I heard, it sounded like he
18 is guilty, but I just assumed from the street talk, it was
19 but I--

20 Q. So you did form an opinion; is that correct?

21 A. I think I can be fair and objective to the facts
22 that are presented if that's what we are trying to ask; yes,
23 sir. But I don't have a--

24 Q. --Okay, what about -- because of -- would you say
25 you are friends with Benny Rigby and the Ballards?

26 A. Yes, sir.

27 Q. Would that friendship affect you to the point where
28 you couldn't be fair and impartial?

29 A. I don't think so.

Individual Voir Dire - JURY OUT

1 Q. If you were chosen as a juror in this case, could
2 you listen to the evidence from the witness stand, take my
3 instructions on the law at the end of the case, apply them to
4 the facts as you see them, discuss those facts and the law
5 with your fellow jurors and reach a decision based on that,
6 on what happened here in this courtroom to the exclusion of
7 your relationship with Mr. Rigby and the Ballards and to the
8 exclusion of what you may have heard?

9 A. Yes, sir. I think I could.

10 Q. Do you think you could be a fair and impartial
11 juror in this case?

12 A. Yes, sir.

13 BY THE COURT: All right, Mr. Evans.

14 BY MR. EVANS: Thank you, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. EVANS:

16 Q. Good evening. I just want to go a little bit, in a
17 little more detail than what the Judge has so far. You
18 understand in a criminal trial the defendant is presumed to
19 be innocent at this phase?

20 A. Yes, sir.

21 Q. And there is a good reason for that. The burden of
22 proof is on the State of Mississippi. It's on us to prove to
23 the jury beyond a reasonable doubt that he is guilty. And at
24 this point you have heard no evidence in open court.

25 A. Yes, sir.

26 Q. So that presumption has a good reason in the law.
27 You understand that?

28 A. Yes, sir.

29 Q. Do you understand that he does not have to prove

Individual Voir Dire - JURY OUT

1 anything to the jury, that the entire burden of proof is on
2 the State of Mississippi, and we must prove each of the
3 elements that the Court says we must prove beyond a
4 reasonable doubt?

5 A. Yes, sir.

6 Q. Now what we are trying to do is arrive at a jury
7 that can be fair and impartial, that can disregard anything
8 that they may have heard because I know probably everybody
9 has heard something about the case. So what we are trying to
10 do is arrive at a jury that will tell us and sincerely tell
11 us, I will disregard everything that I have heard; everything
12 that I base my decision of guilt or innocence on will be what
13 I hear in court and what instructions the Judge gives me.
14 Can you do that?

15 A. Yes, sir.

16 Q. Now this is a capital murder trial. Because of
17 that, it can be two phases to it. The first phase is what is
18 commonly referred to as guilt or innocence. In that phase
19 the only thing that the jury is to look at is whether or not
20 the defendant is guilty. And the penalty isn't even supposed
21 to enter into the jury's deliberation at that point, just
22 guilt or innocence. Can you tell us that in that phase if
23 you are picked as a juror, you will listen to what you hear
24 in court, base your decision strictly on that, on the guilt
25 or innocence part?

26 A. Yes, sir.

27 Q. Now if the jury finds him guilty, then we go into a
28 second phase. In that phase the way it will work, the State
29 will put on factors that are by law considered aggravating

Individual Voir Dire - JURY OUT

1 factors. What that is, it will be things that we will be
2 trying to show the jury that the death penalty is the
3 appropriate punishment. Then the Defense will be able to put
4 on what is called mitigating factors. Those mitigating
5 factors are, of course, they are limited to a certain extent
6 by the Court, but it is pretty wide open as to what the
7 Defense can go into. Those are factors that the Defense will
8 be showing to the jury to try to justify that in this
9 particular case a life sentence is the appropriate
10 punishment. Now the jury is not supposed to consider what
11 penalty is appropriate until after they have heard from both
12 sides and heard the Court's instructions.

13 Once both sides get through, then the Judge will
14 read instructions to the jury. In those instructions it will
15 tell the jury step by step what the jury must do, first to
16 even consider the death penalty, and then if they do, how to
17 consider that.

18 If you are picked as a juror, can you tell us that
19 in that phase you will not consider any penalty until you
20 have heard from both sides, heard the Court's instructions,
21 and then only after that and deliberating with other jurors,
22 determine what penalty is appropriate in this particular
23 case?

24 A. Yes, sir.

25 **BY MR. EVANS:** That's all, Your Honor.

26 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

27 Q. Mr. Barbour, I notice in the spelling on your name,
28 are you related to our new Governor?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. You said you know Mr. Rigby and the Ballards?

2 A. Correct.

3 Q. How is it that you know them?

4 A. We have a merchants association, Winona business
5 association here in Winona, and we with our company, our
6 store, we joined that organization several years ago. Frank
7 was the president at the time, and that's where we got to
8 know him. My wife knew Roxanne before that. Mr. Rigby is
9 also a member of that association, and I have gotten to know
10 him through that.

11 Q. How often do you see them?

12 A. We meet generally once a month, and I may run into
13 Frank or Mr. Rigby on the street once in a while but not
14 often, not much more than that.

15 Q. About once a month on average?

16 A. Twice a month at the most, yes, sir.

17 Q. How many people are in this association?

18 A. We have approximately 28 to 30 members.

19 Q. Has this case or the death penalty ever been
20 discussed in this association?

21 A. Not that I'm aware of; no, sir.

22 Q. Not while you were there?

23 A. I mean not in meetings. I mean when we have
24 gathered, you know, for a meeting at 5:30 and people get
25 there early, there may have been talk about it then. But I
26 have not been able to attend meetings for a couple of months.
27 So as far as I know, no.

28 Q. Okay, I wasn't asking if it was agenda item. I
29 just meant when y'all got together.

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. And you are saying you don't recall being present
3 at any discussion?

4 A. No, sir.

5 Q. At any time when it was discussed?

6 A. No, sir.

7 Q. Now you said that you can be a fair and impartial
8 juror and listen to the evidence, and that may at the end of
9 the trial, you may feel like the evidence isn't there and
10 that you believe Mr. Flowers is not guilty. And my question
11 is you will have to go back to your association meeting next
12 month. Do you think that you will have any trouble going to
13 that meeting?

14 A. No, sir. I don't think so. I mean if the evidence
15 is there, I can vote that way. If it's not there, I feel a
16 clear conscience to go whichever way the evidence is
17 presented that we are supposed to weigh both sides to see
18 where the, if it has been presented factually, yes, sir.

19 Q. And if you are in the jury room deliberating this
20 case, do you think the fact that you know you are going to
21 see Mr. Rigby or the Ballards at the next association
22 meeting, do you think that would weigh on you in any way?

23 A. No, sir.

24 Q. Now we have been asking if you can follow the law
25 on the death penalty. I would just like to ask you what is
26 your opinion of the death penalty? Are you a supporter?

27 A. I could vote the death penalty if it were
28 necessary; yes, sir. I'm not opposed to it, no.

29 Q. Would you say you lean in favor of it?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Not used enough or about right or?

3 A. I don't think it is used enough, frankly.

4 Q. And what we are talking about, the death penalty in
5 Mississippi is not even an available punishment for the crime
6 of murder, that it is only an available punishment if there
7 is an additional factor such as a killing during the
8 commission of a robbery.

9 A. I was not aware of that.

10 Q. So when we are talking about a capital murder, you
11 would have, you and eleven other jurors would have to have
12 heard evidence that convinced you beyond a reasonable doubt
13 that a person is guilty of killing and robbery.

14 A. Yes, sir.

15 Q. So, and I'm not asking for an opinion on this case
16 but just in general, you are thinking about somebody is
17 convicted of killing during the commission of a robbery. In
18 that circumstance do you think that the death penalty would
19 really be the only appropriate punishment?

20 A. I'm not, not being a lawyer and not being as
21 familiar with the law as you or the other folks here, it
22 could be, it could be appropriate, but it might not
23 necessarily be the appropriate one.

24 Q. Okay, that's what my question was, is that would
25 you say if it's murder, killing during a robbery, then it
26 would be automatic death penalty?

27 A. No, I don't think it has to be automatic.

28 Q. Okay, and that is correct. That is what the law
29 is. We are just trying to make sure I understand what it is

Individual Voir Dire - JURY OUT

1 you are saying.

2 A. Yes, sir.

3 Q. And what you are telling us is that you would be
4 willing to listen to factors that don't relate to the crime.
5 We are not talking about self-defense or insanity or
6 something like that. We are talking about mitigating
7 circumstances; it may be anything about a person's life. Is
8 that something you could consider in reaching a decision on
9 sentence?

10 A. I think so.

11 BY MR. DE GRUY: That's all I have, Your Honor.

12 BY THE COURT: Okay, thank you, Mr. Barbour. You
13 may step down.

14 (Juror 86, Mr. Barbour, leaves the courtroom.)

15 BY THE COURT: Any objection to him for cause?

16 BY MR. EVANS: No, sir.

17 BY MR. DE GRUY: No, Your Honor.

18 BY THE COURT: He can go to the room. Martha
19 Kent.

20 (JUROR NO. 87, MS. MARTHA K. KENT, enters the
21 courtroom.)

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. Would you state your name, please, ma'am.

24 A. Martha Kay Kent.

25 Q. Ms. Kent, have you heard anything about this case?

26 A. Yes.

27 Q. How did you hear that?

28 A. Hearsay. Well, yeah, hearsay, read it in the news,
29 talked to friends, and then there is a teacher; I knew some

Individual Voir Dire - JURY OUT

1 of the teachers who were close friends of the victims'
2 families, and they told me things that they had heard and
3 that they had observed.

4 Q. Okay. Are you friends with any of the victims'
5 families, or were you friends with the victims?

6 A. Yes.

7 Q. Which ones?

8 A. I taught Derrick Stewart. He played baseball with
9 my son, and they were good friends. My oldest son played
10 baseball with Bryan Rigby, and they graduated together. And
11 so yes, I'm associated with the families. Frank and Roxanne
12 lived across the street from me at that time.

13 Q. Okay. Have you ever had any discussions with any
14 of the family?

15 A. Not the family, no.

16 Q. Just with folks that have had discussions with the
17 family?

18 A. And that had been to previous trials, yes.

19 Q. Okay. You are aware of--

20 A. Yes.

21 Q. --those other trials, okay. How about Mr. Flowers;
22 do you know him?

23 A. No, I do not.

24 Q. Do you know any of his family?

25 A. I do not know all of his family, so I'm not aware
26 of that. I might have taught. I don't know.

27 Q. Based on what you have heard and your relationship
28 with at least one of the victims and one of the children of
29 the victims and some of the victims' family, based on those

Individual Voir Dire - JURY OUT

1 relationships and what you have heard or read in the media,
2 have you formed an opinion as to the guilt or innocence of
3 Mr. Flowers?

4 A. Yes.

5 Q. Would it keep you from being a fair and impartial
6 juror in this case?

7 A. I could listen to evidence. I would hope not.

8 Q. Okay. If you were seated as a juror in this case,
9 could you listen to the evidence that comes from the witness
10 stand, take my instructions on the law at the end of the case
11 and apply them to the facts as you see them and then discuss
12 that with your fellow jurors, and arrive at a decision to the
13 exclusion of what you have heard or read and to the exclusion
14 of your relationship with these individuals?

15 A. I have a feeling that emotion would cloud some of
16 that. And to the exclusion of it?

17 Q. Right.

18 A. I don't -- I doubt it, not to the exclusion of what
19 I already know.

20 Q. Okay, don't you think that would then keep you from
21 being a fair and impartial juror?

22 A. It would certainly reflect upon it, yes.

23 Q. All right.

24 BY MR. EVANS: No questions.

25 BY MR. DE GRUY: No, Your Honor.

26 BY THE COURT: Thank you, Ms. Kent.

27 (Juror 87, Ms. Kent, leaves the courtroom.)

28 BY THE COURT: I'm going to excuse her for cause.
29 Any objection?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** No, sir.

2 **BY MR. DE GRUY:** No objection.

3 **BY THE COURT:** She can go. Alexander Robinson.

4 (JUROR NO. 88, MR. ALEXANDER ROBINSON, enters the
5 courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. State your name, please, sir.

8 A. Alexander Robinson, Jr.

9 Q. Mr. Robinson, have you ever heard anything about
10 this case?

11 A. I saw it on TV. Radio and TV.

12 Q. Radio and TV?

13 A. Right.

14 Q. Do you know any of the people involved?

15 A. No, I don't.

16 Q. Didn't know any of the victims like Mr. Golden or
17 anybody like that?

18 A. No, sir.

19 Q. Do you know Mr. Flowers?

20 A. No, sir. I haven't ever seen him.

21 Q. Do you know his family?

22 A. No, sir.

23 Q. Where is it that you live, Mr. Robinson?

24 A. Duck Hill.

25 Q. Duck Hill. And you, but you have seen it on the
26 radio and the television; is that right?

27 A. Right.

28 Q. Have you heard any street talk about it?

29 A. Well, a little.

Individual Voir Dire - JURY OUT

1 Q. Okay. Did that street talk come from anybody that
2 knew anything about this case, or was it just gossip?

3 A. Just gossip.

4 Q. Based on what you have read and heard, have you
5 formed any opinion as to the guilt or innocence of
6 Mr. Flowers?

7 A. No, sir. I haven't.

8 Q. Do you know of any reason that you could not be a
9 fair and impartial juror in this case?

10 A. No, I don't.

11 BY THE COURT: Okay. Mr. Evans.

12 BY MR. EVANS: Thank you, Your Honor.

13 INDIVIDUAL VOIR DIRE BY MR. EVANS:

14 Q. How are you doing, Mr. Robinson?

15 A. Good evening.

16 Q. Do you live in Duck Hill now?

17 A. Right.

18 Q. And you used to live in Kilmichael?

19 A. I went to school in Kilmichael.

20 Q. Where do you work?

21 A. Heatcraft.

22 Q. Now yesterday morning when the Judge was asking
23 about people that were related to the Defendant, you were in
24 the courtroom then, weren't you?

25 A. Right.

26 Q. And you saw all the different people in the
27 courtroom that were related to him. Were you related to any
28 of them?

29 A. No, sir. No, sir.

Individual Voir Dire - JURY OUT

1 Q. You do not know the Defendant?

2 A. No, I haven't ever seen him.

3 Q. His father is Archie Flowers that works at
4 Wal-Mart. Do you know him?

5 A. No, I haven't, I don't know him.

6 Q. You don't know him?

7 A. No, I don't.

8 Q. Do you know his mother, Lola Campbell Flowers?

9 A. None of the family.

10 Q. None of the family?

11 A. No, sir.

12 Q. How about the Forrests, Forrest family?

13 A. No.

14 Q. Nelson Forrest?

15 A. I don't know them.

16 Q. You don't know the supervisor?

17 A. (Juror shakes his head.)

18 Q. The answer was no?

19 A. No, sir. I don't know.

20 Q. What have you heard about this case, Mr. Robinson?

21 A. Well, I heard it was a murder. That's about, you
22 know, what I heard on the radio. That's what I heard, but I
23 haven't--

24 Q. Have you discussed this case with anybody?

25 A. No, I don't discuss no case.

26 Q. You have no opinion at this point as to the guilt
27 or innocence of this Defendant?

28 A. No, I couldn't, I don't do that.

29 Q. So if you were picked as a juror, could you listen

Individual Voir Dire - JURY OUT

1 to the evidence and be fair and impartial to both sides in
2 this case?

3 A. I could.

4 Q. And base your decision on the evidence in the case?

5 A. Right.

6 Q. As the Court has told you, this is a capital case.
7 Now if we go into the first phase and the jury finds the
8 defendant guilty, then we go into the penalty phase. In that
9 phase there are two possible penalties. He could receive the
10 death penalty, or he could receive life. Do you have any
11 beliefs, personal or religious, against the death penalty?

12 A. I don't favor no death penalty.

13 Q. You are against the death penalty; right?

14 A. (Juror nods his head.) Right.

15 Q. Is that a personal or religious?

16 A. That is personal.

17 Q. Personal belief? Is it a strong personal belief?

18 A. Well, I have been in Vietnam, and I have seen
19 enough of it, and I don't just believe in nothing with the
20 families or nobody like that. When I came out of Vietnam, I
21 didn't want to have nothing to do with nothing like that.

22 Q. Okay. You don't want to have anything to do with
23 anything to do with the death penalty?

24 A. No, sir. I don't.

25 Q. Of course, you understand that that is one of the
26 options that the jury would be required to consider. Now my
27 question to you is this. Is your views against the death
28 penalty so strong that even if the Judge told you that the
29 death penalty was a penalty that you could consider, that it

Individual Voir Dire - JURY OUT

1 was an authorized penalty in this case and even if the facts
2 justified it, you yourself could not vote for the death
3 penalty because of your beliefs?

4 A. Well, to be authorized, I would, I would vote in
5 favor of it.

6 Q. You could vote in favor of the death penalty?

7 A. If he authorized it.

8 Q. Even though you don't believe in it? Now
9 authorized doesn't mean the Judge is saying that you would
10 have to give the death penalty, just that that would be one
11 of two appropriate penalties. You understand that?

12 A. Right.

13 BY MR. CARTER: Your Honor, I object to further
14 questions on that. He has answered it.

15 BY THE COURT: I think he has answered it.

16 BY MR. EVANS: What was the last answer? I was
17 listening to the objection.

18 BY THE COURT: His answer was that he could.

19 BY MR. EVANS: Okay.

20 BY MR. EVANS:

21 Q. Mr. Robinson, did you fill out the questionnaire?

22 A. I did, but I didn't, I had filled it out in the
23 building after I got -- I forgot to fill it out at the house.

24 Q. Okay. And this may just be from me not being able
25 to look at it, but what was your answer on the death penalty
26 question on the questionnaire?

27 A. I'm not, I don't think I filled that out. I think
28 I left that blank.

29 Q. Okay, there is something there, but I can't tell

Individual Voir Dire - JURY OUT

1 for sure. That's why I was just asking if you remembered
2 what you put there.

3 A. I don't.

4 Q. I also notice that in your questionnaire you have
5 served on a jury before; is that correct?

6 A. Right.

7 Q. In that case the verdict was not guilty?

8 A. Right.

9 Q. And I just ask you this, kind of based on that, do
10 you have any beliefs, whether it be religious or personal,
11 that you yourself should not sit in judgment of anyone else?

12 A. I don't have no belief like that.

13 Q. Okay. What church do you go, Mr. Robinson?

14 A. It would be Sweet Home in Duck Hill.

15 Q. Sweet Home in Duck Hill. Has there been any
16 discussion in your church about this case?

17 A. No.

18 BY MR. EVANS: That's all we have, Your Honor.

19 BY MR. DE GRUY: No questions, Your Honor.

20 BY THE COURT: All right, Mr. Robinson, you may
21 step down.

22 (Juror 88, Mr. Robinson, leaves the courtroom.)

23 BY THE COURT: Any objection to him?

24 BY MR. EVANS: No, sir, not for cause.

25 BY MR. DE GRUY: No, Your Honor.

26 BY THE COURT: None from the State; I assume none
27 from the Defense. Okay. He goes to the room. Barry
28 Dismuke.

29 (JUROR NO. 89, MR. BARRY DISMUKE, enters the

Individual Voir Dire - JURY OUT
courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please, sir.

A. Barry Dismuke.

Q. Mr. Dismuke, have you heard about this case?

A. Yes, sir.

Q. How did you hear about it?

A. News, the paper, word of mouth.

Q. Have you formed an opinion about this?

A. Yes, sir.

Q. All right, would that opinion keep you from being a
fair and impartial juror?

A. Yes, sir.

Q. Okay.

BY THE COURT: Any questions?

BY MR. EVANS: No, sir.

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: Mr. Dismuke, thank you.

(Juror 89, Mr. Dismuke, leaves the courtroom.)

BY THE COURT: His name doesn't have an "S" on
it, by the way. I'm going to strike him for cause.
Any objection?

BY MR. EVANS: No objection.

BY MR. DE GRUY: No objection.

BY THE COURT: He can go. Byron Minnieweather.

(JUROR NO. 90, MR. BYRON ALLEN MINNIEWEATHER,
enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please, sir.

Individual Voir Dire - JURY OUT

1 A. Byron Allen Minniweather.

2 Q. Mr. Minniweather, have you heard about this case?

3 A. Somewhat. I was a child. 15 years old.

4 Q. Fifteen years old. You knew it happened though; is
5 that correct?

6 A. Yes, sir.

7 Q. Did you read about it in the newspaper?

8 A. No, sir.

9 Q. Have you heard it on the radio or on television?

10 A. During a little proceedings I saw bits and pieces
11 on the news. That's about it.

12 Q. Did you, have you heard any street talk or gossip
13 about it? Has anybody discussed it?

14 A. In the past. Like said something about it. That's
15 about it.

16 Q. Do you know Mr. Flowers?

17 A. No, sir.

18 Q. Did you know anybody in his family?

19 A. Not directly.

20 Q. Okay. Did you know Robert Golden?

21 A. No, sir.

22 Q. Did you know anybody in his family?

23 A. No, sir.

24 Q. Did you know any of these other victims or their
25 family?

26 A. The Stewart guy.

27 Q. BoBo Stewart, did you know him?

28 A. I seen him around. We was in high school together.

29 Q. Y'all were in school together?

Individual Voir Dire - JURY OUT

1 A. Yeah, he was like, around probably three years
2 older than me.

3 Q. Okay. Based on what you have heard, Mr.
4 Minniweather, have you formed an opinion as to the guilt or
5 innocence of Mr. Flowers?

6 A. No, sir.

7 Q. All right, if you were selected as a juror on this
8 case, could listen to the evidence that comes from the
9 witness stand, take my instructions on the law at the end of
10 this case, and discuss it with your fellow jurors, and then
11 reach a decision in this matter to the exclusion of anything
12 else you might have heard or know?

13 A. Yes, sir.

14 Q. Do you know of any reason that you could not be a
15 fair and impartial juror in this case?

16 A. No, sir.

17 Q. All right.

18 **BY THE COURT:** Mr. Evans.

19 **BY MR. EVANS:** Thank you, Your Honor.

20 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

21 Q. How are you doing this evening?

22 A. I am doing all right.

23 Q. Mr. Minniweather, as the Judge has told you, what
24 we are trying to do is find a jury that can disregard
25 anything they may have heard out in the community and base a
26 decision of guilt or innocence on the evidence that comes out
27 in the courtroom. Can you tell us that you can disregard
28 anything that you may or may not have heard and base your
29 entire decision of guilt or innocence on the facts that come

Individual Voir Dire - JURY OUT

1 out in the courtroom?

2 A. Yes, sir.

3 Q. Okay. Now this is a capital murder case. Because
4 of that fact, the death penalty is a possible penalty in this
5 case. Do you have any beliefs, whether it be personal or
6 religious, against the death penalty?

7 A. No, sir.

8 Q. So if the facts justified it and the law authorized
9 it, you could return a verdict of guilty in a case if you
10 thought the facts justified it?

11 A. Yes, sir.

12 Q. Okay. Now I know in the past I had to prosecute a
13 case that dealt with your father. Is there anything about
14 the fact that I had to prosecute that case that you would
15 hold any resentment against the State?

16 A. No, sir.

17 Q. Could you disregard that fact, listen to the
18 evidence, and base your decision if you were picked as a
19 juror on just what you heard in court?

20 A. Yes, sir.

21 Q. And that not enter into your decision at all?

22 A. No, sir.

23 Q. Okay. Where do you work?

24 A. I work for Yates Services in Canton, Mississippi.
25 At the Nissan plant.

26 Q. Oh, okay. How long have you been down there?

27 A. Probably a month and a half now.

28 Q. Where did you work before that?

29 A. Wal-Mart in Greenwood.

Individual Voir Dire - JURY OUT

1 Q. In Greenwood?

2 A. Yes, sir.

3 Q. Have you ever worked at the Wal-Mart here?

4 A. No, sir.

5 Q. Now you know the Defendant's father, Archie
6 Flowers, that works at Wal-Mart here?

7 A. I seen him in the past like when he used to work at
8 Jeff's.

9 Q. Okay. So you knew him from Jeff's?

10 A. Yeah.

11 Q. Did you grow up in that neighborhood?

12 A. The neighborhood over, we call it White City.

13 Q. Uh-hum.

14 A. I don't know if he lived there, but that's where I
15 grew up over there. Estate Circle.

16 Q. Okay. Who else in the Defendant's family do you
17 know? Do you know his brother, Archie, Jr.?

18 A. Like not directly. I go like face value. I really
19 don't.

20 Q. You know him when you see him? Is that what you
21 are saying?

22 A. Yeah.

23 Q. How about his sisters?

24 A. Sisters. I deal with people on face value really.

25 Q. You don't have any close connection with any of his
26 family?

27 A. No, sir.

28 Q. Are you related in any way to any of them?

29 A. No, sir.

Individual Voir Dire - JURY OUT

1 Q. Can you tell me what you have heard about this
2 case?

3 A. Some people got killed. That's the guy that is
4 being prosecuted. That is about it. I don't know.

5 Q. Have you heard that from anybody that was friends
6 of the Defendant as far as you know?

7 A. No, sir.

8 BY MR. EVANS: That's all we have, Your Honor.

9 BY MR. DE GRUY: We have no questions, Your
10 Honor.

11 BY THE COURT: No questions?

12 BY MR. DE GRUY: No questions.

13 BY THE COURT: Okay. Mr. Minnieweather, you may
14 step down.

15 (Juror 90, Mr. Minnieweather, leaves the
16 courtroom.)

17 BY THE COURT: Any objection to him?

18 BY MR. EVANS: No, sir.

19 BY MR. DE GRUY: No, Your Honor.

20 BY THE COURT: Larry Castle.

21 (JUROR NO. 91, MR. LARRY CASTLE, enters the
22 courtroom.)

23 INDIVIDUAL VOIR DIRE BY THE COURT:

24 Q. State your name, please, sir.

25 A. Larry Castle.

26 Q. Mr. Castle, have you ever heard anything about this
27 case?

28 A. Yes, sir.

29 Q. You are, I know you are a supervisor now, but you

Individual Voir Dire - JURY OUT

1 are in law enforcement or have been?

2 A. Yes, sir. I am still a sworn officer. I still
3 wear the badge and gun every day.

4 Q. All right. And that has also been in Winona,
5 Montgomery County?

6 A. Yes, sir.

7 Q. Okay. Did you hear any of what you know about this
8 case through your association with law enforcement?

9 A. No, sir.

10 Q. How did you hear it?

11 A. Word of mouth.

12 Q. Okay.

13 A. Talk.

14 Q. Okay, I assume radio, television and the newspaper?

15 A. Yes, sir.

16 Q. All right. Did the word of mouth you hear, was
17 that street talk or gossip, or did it come from people that
18 purported to actually know what happened?

19 A. Street talk or gossip.

20 Q. All right. Are you friends or were you friends
21 with any of the victims?

22 A. Yes, sir. I had a, took a 12 week leadership
23 training course with Ms. Tardy. I knew Carmen. I know
24 Benny. I knew Mr. Stewart's father since high school.

25 Q. Okay, so you have known all of these people fairly
26 well for--

27 A. Three of the victims, yes, sir.

28 Q. Okay. Would you consider yourself friends with
29 them?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Okay. Have you ever had any discussions with any
3 of the family of the victims about this matter?

4 A. No, sir.

5 Q. Have they ever discussed it in front of you or
6 around you?

7 A. No, sir.

8 Q. All right. Do you know Mr. Flowers?

9 A. I do not.

10 Q. Do you know any of his family?

11 A. I do not.

12 Q. Mr. Castle, based on what you have heard about this
13 case and your knowledge of this case through hearsay or the
14 media, and also considering your relationship with the
15 victims and the families of the victims, have you formed an
16 opinion as to the guilt or innocence of Mr. Flowers?

17 A. Yes, sir. I formed an opinion because of the
18 process.

19 Q. Okay.

20 A. That I know has occurred to this point and because
21 of my experience, not judicially, but enforcement wise I know
22 what has occurred, and because of that, I have a very strong
23 opinion.

24 Q. Okay. Would that opinion keep you from being fair
25 and impartial in this case?

26 A. It would not keep me from being unbiased, but it
27 would sure be a perception to others that I was biased.

28 Q. Okay. When you say you know about the process. I
29 think I know what you mean, but I'm going to let you tell me

Individual Voir Dire - JURY OUT

1 what you mean.

2 A. I know four people were killed. I know that
3 enforcement gathered evidence, interviewed people, found the
4 suspect. I know that the DA's Office decided there was
5 evidence sufficient to try this suspect and convict this
6 suspect. I know that he has been convicted twice, or at
7 least that's the word that I have heard. And because of that
8 process occurring, I have a very strong opinion of the guilt
9 of the suspect.

10 Q. All right, and that, together with your experience
11 in law enforcement, I think -- tell me if I'm correct; that
12 would influence your decision in this case? Is that correct?

13 A. It would take considerable information to change my
14 mind. Yes, sir.

15 Q. So in other words -- there again I am certainly not
16 trying to put words in your mouth, but I'm trying to make
17 sure the record reflects what you are saying. Are you
18 telling me that it would require proof from the Defendant to
19 overcome what you feel now?

20 A. Yes, sir. It would require proof.

21 Q. All right.

22 BY THE COURT: Any questions, Mr. Evans?

23 BY MR. EVANS: No, sir.

24 BY THE COURT: How about you, Mr. de Gruy?

25 BY MR. DE GRUY: No, Your Honor.

26 BY THE COURT: Thank you, sir.

27 (Juror 91, Mr. Castle, leaves the courtroom.)

28 BY THE COURT: Okay, I'm going to excuse him for
29 cause. Any objection to that?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** No, sir.

2 **BY MR. DE GRUY:** No, Your Honor.

3 **BY THE COURT:** Jason Eskridge.

4 (JUROR NO. 92, MR. JASON ALAN ESKRIDGE, enters the
5 courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. State your name, Mr. Eskridge.

8 A. Jason Allen Eskridge.

9 Q. It's a redundant question. Have you heard about
10 this case?

11 A. Yes, sir. I have.

12 Q. How did you hear about it?

13 A. Mostly through people talking and newspaper back
14 when it happened.

15 Q. All right, so you heard, have seen the media
16 coverage of it; is that correct?

17 A. Yes, sir.

18 Q. And you have heard street talk; is that right?

19 A. Yes, sir.

20 Q. Did you know any of the victims or any of their
21 families?

22 A. No, sir.

23 Q. So have you ever heard any of them talk about it?

24 A. No, sir.

25 Q. Okay. Do you know Mr. Flowers or any of his
26 family?

27 A. No, sir.

28 Q. All right. Based on what you have heard on the
29 street or through the media, have you formed an opinion as to

Individual Voir Dire - JURY OUT

1 the guilt or innocence of Mr. Flowers in this matter?

2 A. Yes, sir. I believe I have.

3 Q. Would that keep you from being a fair and impartial
4 juror in this case?

5 A. I don't think so. I really don't.

6 Q. All right, well, let me ask you this then. If you
7 were seated as a juror, could you listen to the evidence that
8 comes from the witness stand, take my instructions on the law
9 at the end of the case, apply them to the facts as you see
10 them, then discuss all that with your fellow jurors, and
11 reach a decision based on that to the exclusion of whatever
12 your opinion is now or whatever you have heard before?

13 A. Yes, sir. I believe I could.

14 Q. Okay, you feel like you could be fair and
15 impartial?

16 A. Yes, sir.

17 Q. Okay. Let me ask you this. I don't want to know
18 what your opinion is, but would that opinion -- you
19 understood what I said yesterday when we were talking, that I
20 would give the jury an instruction that they must presume
21 that the defendant is innocent until such time as the State
22 proves his guilt beyond a reasonable doubt. Did you
23 understand that?

24 A. Yes, sir. I did.

25 Q. You understand when I also told you that not only
26 did he not have to prove anything, he doesn't have to put on
27 any proof, and he doesn't have to testify. And I told you
28 that if he didn't testify, that you couldn't hold that fact
29 against him. Did you understand that?

Individual Voir Dire - JURY OUT

1 A. Yes, sir. I did.

2 Q. Would you require him to put on any proof or to
3 testify to overcome the opinion that you have?

4 A. No, sir.

5 **BY THE COURT:** Okay, Mr. Evans.

6 **BY MR. EVANS:** Thank you, Your Honor.

7 INDIVIDUAL VOIR DIRE BY MR. EVANS:

8 Q. Good afternoon. As we have kind of been going
9 through with you, what we are attempting to do is get a jury
10 that can disregard anything that they have heard or any
11 opinion that they may have at this point, listen entirely to
12 the evidence as it comes out in court, the instructions that
13 the Court will give the jury, and base that decision only on
14 that. Can you do that?

15 A. Yes, sir. I believe I can.

16 Q. And as the Court has gone through with you, the
17 burden of proof, not only in this case, but in any criminal
18 case is on the State of Mississippi. We must prove to the
19 jury that is sitting up here in this case or any other case
20 that the defendant is guilty. The defendant never has to
21 prove anything. The entire burden is on us, and until we
22 have proven him guilty beyond a reasonable doubt, there is a
23 presumption of innocence that protects him. Do you
24 understand that?

25 A. Yes, sir. I do.

26 Q. So at this point in the trial, can you tell us that
27 you agree with that presumption of innocence and that you
28 would follow that until such point as you were convinced that
29 the State of Mississippi had put on sufficient proof to prove

Individual Voir Dire - JURY OUT

1 to you in open court that he was, in fact, guilty of what he
2 is charged?

3 A. Yes, sir.

4 Q. All right. Going one step further, this is a
5 capital murder trial. There are two possible penalties in
6 this case, one the death penalty and one life. .But before we
7 can even get to that penalty, the jury must convict him in
8 the first phase. So in the first phase, the jury is not even
9 supposed to consider what the two possible penalties are.
10 Will you tell us that at this point you will agree that you
11 won't even think about the possible penalty until that
12 phase?

13 A. Yes, sir.

14 Q. Even once we get to that phase, the Court will tell
15 you that what the procedure will be, the State can put on
16 proof. We plan to put on proof of what is called aggravating
17 circumstances. And in doing that, we will be attempting to
18 convince the jury that the proper penalty in this case is
19 death. Then the Defense can put on proof, and they can put
20 on mitigating circumstances. The mitigating circumstances
21 are basically unlimited. The Court can limit them to a
22 certain extent, but basically, they can put on just about
23 anything about the Defendant's life to try to justify to the
24 jury that in this particular case a life sentence is the
25 appropriate penalty. The jury is not to even consider which
26 penalty is appropriate until both sides have put on their
27 proof and the Judge has told the jury in its instructions how
28 they are to look at the proof and what steps the jury must
29 take.

Individual Voir Dire - JURY OUT

1 Can you tell us that if you are picked as a juror
2 in that phase, that you will not consider either penalty
3 until that phase, and then you will listen to the Court's
4 instructions and follow it as far as to, how to look at the
5 evidence that each side puts on?

6 A. Yes, sir.

7 Q. In other words, you would not automatically vote
8 for life, or you wouldn't automatically vote for the death
9 penalty. You would weigh it all out as the Court tells you
10 you are to weigh it, and then make your decision after
11 discussing the case with the other jurors?

12 A. Yes, sir.

13 BY MR. EVANS: That's all we have, Your Honor.

14 BY MR. DE GRUY: Thank you, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

16 Q. Mr. Eskridge, do you know Barry Eskridge?

17 A. Yes, sir. I do. That's my cousin.

18 Q. That's your cousin. Are y'all close?

19 A. Well, see each other a couple a times a year.

20 That's about it.

21 Q. Do you know, have you ever discussed this case with
22 him?

23 A. No, sir.

24 Q. Do you know of any involvement he has?

25 A. No, sir, uh-uh.

26 Q. He is an EMT; is that correct?

27 A. Yes, sir. He owns MedStat.

28 Q. To your recollection, do you ever recall him
29 mentioning this case?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Now if he were called as a witness in this case, do
3 you believe that you could fairly evaluate your cousin's
4 credibility as just as if he were any other witness?

5 A. I feel like I could. Yes, sir.

6 Q. Now you have talked a little bit about the death
7 penalty, and I will just ask you straight out. What is your
8 opinion of the death penalty?

9 A. I feel like it is justified in certain
10 circumstances, but you know.

11 Q. Would you say we impose it too often or not enough
12 or?

13 A. I really can't say on that. It's about right, I
14 guess.

15 Q. Is it something you have given much thought to?

16 A. Not a whole lot, no.

17 Q. Now Mr. Evans was telling you in making this
18 decision, first a jury has to find someone guilty of killing
19 during the commission of a robbery. The Judge will give you
20 that definition of capital murder. Do you think that that is
21 a proper circumstance to consider the death penalty?

22 **BY MR. EVANS:** I don't think that is proper. I
23 think the Court is going to tell him what
24 circumstances to consider it.

25 **BY THE COURT:** I'm going to instruct them as to
26 what they have got to do. If he will follow my
27 instructions, that would be the question.

28 **BY MR. DE GRUY:**

29 Q. That the law would allow you to consider the death

Individual Voir Dire - JURY OUT

1 penalty in that situation. Is that a situation that you
2 would say you would be inclined to give the death penalty?

3 A. If I understand your question correctly, I believe
4 so, yes, sir.

5 Q. So if you were on a jury and a person were found
6 guilty of killing during the commission of a robbery, and you
7 know, we will tell you; the proof is going to show that there
8 were multiple people killed during the commission of a
9 robbery. Is that the situation where you would say the death
10 penalty would be the only appropriate punishment?

11 A. Well, I can't say not the only, you know, because I
12 haven't heard the facts so.

13 Q. And the facts you are talking about, you would be,
14 you would consider something unrelated to the killing during
15 the commission of a robbery; that you would consider
16 things -- if the Judge instructed you, you could consider
17 anything about a person's life or background or--

18 A. -- I believe--

19 Q. -- that you would be able to do that?

20 A. Yes, sir.

21 Q. And, but you would be leaning towards the death
22 penalty. Is that--

23 A. Uh, not really because, you know, not without
24 hearing the facts, I really can't say which way I would be
25 leaning on it.

26 Q. Okay. And that is fair enough. Your opinion is
27 that you wouldn't be leaning, right now you wouldn't be
28 leaning one way or the other. You would want to hear the
29 evidence?

Individual Voir Dire - JURY OUT

1 A. Right.

2 Q. I can respect that.

3 BY MR. DE GRUY: I have no other questions.

4 BY THE COURT: Thank you, Mr. Eskridge. You may
5 step down.

6 (Juror 92, Mr. Eskridge, leaves the courtroom.)

7 BY THE COURT: Any objection to him?

8 BY MR. EVANS: No, sir.

9 BY MR. DE GRUY: No, sir.

10 BY THE COURT: He can to go the room. Betty
11 Herring.

12 (JUROR NO. 93, MS. BETTY D. HERRING, enters the
13 courtroom.)

14 INDIVIDUAL VOIR DIRE BY THE COURT:

15 Q. State your name, please, ma'am.

16 A. Betty Herring.

17 Q. Ms. Herring, have you ever heard anything about
18 this case?

19 A. Yes, sir.

20 Q. How did you hear it?

21 A. I read the newspaper and listen to the news on TV.

22 Q. Okay. Have you heard any street talk or community
23 talk about it?

24 A. Yes, sir.

25 Q. Did that come from anybody that purported to know
26 what the facts were?

27 A. I think it would be gossip.

28 Q. Okay. Did you know any of the victims?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. Which ones?

2 A. Carmen, and I had bought furniture from Bertha
3 Tardy.

4 Q. Okay. I assume you know some of their family; is
5 that correct?

6 A. Yes, sir.

7 Q. Have you ever had any discussions with any of the
8 family about this matter?

9 A. No, sir.

10 Q. Have they ever discussed it in front of you?

11 A. No, sir.

12 Q. Did you know Mr. Flowers, or do you know him?

13 A. No, sir.

14 Q. Do you know any of his family?

15 A. I taught school in Kilmichael for 29 years and
16 taught a lot of Flowers children, so I don't know.

17 Q. Where do you live now? Kilmichael?

18 A. Kilmichael.

19 Q. And that's where you lived when this occurred?

20 A. Yes, sir.

21 Q. Based on what you have heard, Ms. Herring, either
22 as street talk or gossip or through the media and based on
23 your relationships with some of the victims or their family,
24 have you formed an opinion as to the guilt or innocence of
25 Mr. Flowers in this case?

26 A. Yes, sir.

27 Q. All right. Would that opinion keep you from being
28 a fair and impartial juror in this case?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. All right.

2 BY THE COURT: Thank you, ma'am. Mr. Evans?

3 BY MR. EVANS: No questions.

4 BY THE COURT: Mr. de Gruy?

5 BY MR. DE GRUY: No questions.

6 BY THE COURT: You may step down. Thank you.

7 (Juror 93, Ms. Herring, leaves the courtroom.)

8 BY THE COURT: I'm going to excuse her for cause.

9 Any objection?

10 BY MR. CARTER: No, sir.

11 BY MR. EVANS: No, sir.

12 BY MR. CARTER: Your Honor, I think we have a
13 witness sitting in. I don't know if it is
14 inappropriate for him to be in here or not, but they
15 are here.

16 BY THE COURT: The rule hasn't been invoked. I
17 don't see where it would affect anything.

18 BY MR. CARTER: Okay.

19 BY THE COURT: Linda Weems.

20 (JUROR NO. 94, MS. LINDA FAYE WEEMS CAMPBELL,
21 enters the courtroom.)

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. State your name, please, ma'am.

24 A. Linda Faye Campbell -- Weems.

25 Q. Okay. Ms. Weems, have you ever heard anything
26 about this case?

27 A. Yes.

28 Q. How did you hear that?

29 A. I was at work when everything happened. So

Individual Voir Dire - JURY OUT

1 somebody came through and told us that somebody got shot at
2 Tardy's.

3 Q. Where do you work, where did you work at that time?

4 A. At Multicraft.

5 Q. Okay, and after that, have you heard any
6 conversation around the community about it?

7 A. Like after it happened, you know, everyone was
8 talking about it. Yes.

9 Q. Did you know any of the victims?

10 A. Not personally, no.

11 Q. Do you know any of their families?

12 A. Yes. The Golden.

13 Q. The Golden family, okay. Have any of them talked
14 to you about this at all or in your presence?

15 A. No.

16 Q. Did you see any media coverage of this or hear any
17 media?

18 A. Yes, on the news and newspaper.

19 Q. Do you know Mr. Flowers?

20 A. Yes. I do.

21 Q. How do you know him?

22 A. He is real good friends, real good friends with my
23 husband.

24 Q. Real good friends with your husband?

25 A. Yes.

26 Q. Do you know other members of his family?

27 A. Yes.

28 Q. All right. Based on what you have heard about this
29 or read about this or what you have heard in the community

Individual Voir Dire - JURY OUT

1 and also based on the relationship with him and your husband,
2 have you formed an opinion as to the guilt or innocence of
3 Mr. Flowers in this matter?

4 A. Not really.

5 Q. If you were seated as a juror in this case, could
6 you listen to the evidence that comes from the witness stand?
7 Could you take my instructions on the law at the end of the
8 case, apply them to the facts as you see them, and discuss
9 that with your fellow jurors, and then end up making a
10 decision based on that rather than the relationship he had to
11 your husband or what you have heard?

12 A. I don't know. I don't know.

13 Q. Well, do you think you could not be fair and
14 impartial in this case?

15 A. To a certain extent.

16 Q. Okay. You are going to have -- well, I have really
17 got -- Ms. Weems, you are going to have to tell me. I
18 appreciate what you are saying, but you have got -- it is an
19 important point, and I have to know one way or another. I
20 need to know whether you can be, based on those things,
21 whether you can be a fair and impartial juror for both sides
22 in this case. Can you?

23 A. I could.

24 Q. Okay. Yesterday we discussed the death penalty.
25 This is a case in which the death penalty could come into
26 play. Do you have a religious or philosophical belief that
27 makes you opposed to the death penalty?

28 A. Yes.

29 Q. All right. If -- the first thing that would have

Individual Voir Dire - JURY OUT

1 to happen before it could even come into play in this case
2 would be that the jury, all twelve jurors would have to find
3 Mr. Flowers guilty beyond a reasonable doubt at the guilt
4 part or first phase of the trial. Do you understand that?

5 A. Yes.

6 Q. If that happened, then it would go to the second
7 phase. In the second phase, if the first phase had happened
8 and I let the jury decide the second phase, then I would have
9 decided that the law authorized the jury to consider the
10 death penalty at that phase. Do you understand that?

11 A. I understand that.

12 Q. Okay. At that phase of the trial, the State would
13 put on evidence of what we call aggravating factors which
14 would be factors or evidence that would weigh toward the
15 imposition of the death penalty or in favor of it. The
16 Defendant would put on mitigating factors, and they can be
17 fairly unlimited. They will go into different aspects of
18 Mr. Flowers' life which would be evidence that would weigh
19 against imposition of the death penalty. Then after they had
20 done that, I would give the jury an instruction that told the
21 jury how to analyze all that and how to apply those
22 aggravating factors and mitigating factors in arriving at a
23 verdict. Do you understand that?

24 A. Yes.

25 Q. And would you consider all that at that time? I'm
26 not talking about the death penalty yet, but would you
27 consider all those things?

28 A. I would consider it.

29 Q. Okay. Then when it came down to it, the choice

Individual Voir Dire - JURY OUT

1 would end up being between the death penalty and life. If I
2 told you that the law authorized it and you found that the
3 facts warranted it or justified it, could you impose the
4 death penalty?

5 A. No.

6 Q. Okay.

7 BY THE COURT: Mr. Evans.

8 BY MR. EVANS: Thank you, Your Honor.

9 INDIVIDUAL VOIR DIRE BY MR. EVANS:

10 Q. Good evening.

11 A. Good evening.

12 Q. I just want to cover a few things with you.

13 Ms. Campbell, your husband is Parish Campbell; is that right?

14 A. That's right.

15 Q. And in addition to being a close friend of the
16 Defendant, they are also related, aren't they?

17 A. Yes, I think so.

18 Q. Are they cousins?

19 A. I really don't know. I really don't.

20 Q. But they are--

21 A. -- I know they was classmates. I know that.

22 Q. Okay. So your husband is a real close friend of
23 the Defendant. He is related to the Defendant. What other
24 family members of the Defendant do you know besides him?

25 A. His father, sister.

26 Q. Which sisters do you know?

27 A. Priscilla.

28 Q. How do you know Priscilla?

29 A. I used to work with her.

Individual Voir Dire - JURY OUT

1 Q. Where did you work with her?

2 A. At KI.

3 Q. How long ago was that?

4 A. Over two years ago.

5 Q. Were y'all friends?

6 A. Not just close, no.

7 Q. Who else in his family do you know?

8 A. His father.

9 Q. And how do you know his father?

10 A. Just at the store he work at and just around the
11 neighborhood; he live close.

12 Q. Okay, have you ever been to any family reunions
13 where--

14 A. --No--

15 Q. -- where any of the Flowers family was there?

16 A. No.

17 Q. Of course, what we are trying to get at and the
18 Judge went into this to a certain extent; we are trying to
19 get a jury that does not have any previous inclinations of
20 how they should vote on this case because of kinships,
21 friendships or anything like that; but would have no reason
22 other than to come into court, listen to the evidence and
23 base their decision strictly on the evidence with no outside
24 influence. The fact that your husband is related to the
25 Defendant, that you are friends with him and he is close
26 friends with him, don't you think that would enter into your
27 decision in this case?

28 A. Probably so. Yes.

29 Q. Now everybody can be fair jurors on one case and

Individual Voir Dire - JURY OUT

1 maybe not be on another case because of people that they are
2 related to or friends to. Because of that, don't you think
3 that that would keep you from being a fair and impartial
4 juror on this particular case?

5 A. Yes.

6 Q. And in addition to that, you have stated that your
7 belief on the death penalty is such that even if the Judge
8 told you that it was authorized and the facts of the case
9 justified it, you yourself could not consider the death
10 penalty nor vote for the death penalty?

11 A. That's right.

12 BY MR. EVANS: That's all, Your Honor.

13 BY MR. DE GRUY: I have no questions.

14 BY THE COURT: You may step down, Ms. Weems.

15 (Juror 94, Ms. Weems Campbell, leaves the
16 courtroom.)

17 BY MR. EVANS: Move for cause.

18 BY THE COURT: Any objection?

19 BY MR. DE GRUY: No objection.

20 BY THE COURT: Strike her for cause. Mary Bibbs.

21 (JUROR NO. 95, MS. MARY V. BIBBS, enters the
22 courtroom.)

23 INDIVIDUAL VOIR DIRE BY THE COURT:

24 Q. State your name, please, ma'am.

25 A. Mary Bibbs.

26 Q. Ms. Bibbs, have you ever heard anything about this
27 case?

28 A. Hearsay.

29 Q. How did you hear about it?

Individual Voir Dire - JURY OUT

1 A. On the news, in the newspaper and on the street.

2 Q. On the street?

3 A. Yeah.

4 Q. Did you know any of the victims in this case?

5 A. Yes, I did.

6 Q. Which ones?

7 A. Robert Golden.

8 Q. Were you friends with him or just know him?

9 A. We worked together.

10 Q. Oh, you did. Where did you work together?

11 A. US Corelite.

12 Q. Okay, and how long ago was that?

13 A. Uh, let's see. I left there in, I left there in
14 '95. Then I came back again in '97.

15 Q. Okay, so you were working with him then right
16 before this--

17 A. --well, before. Yeah, before then.

18 Q. Okay. Do you know his family?

19 A. No.

20 Q. Have you ever had any discussion with any of his
21 family? I guess you haven't if you don't know them.

22 A. Uh-uh.

23 Q. Do you know Mr. Flowers?

24 A. Yeah, I know him too.

25 Q. How do you know him?

26 A. We worked together.

27 Q. Where did you work together?

28 A. Richardson Brothers.

29 Q. How long ago was that?

Individual Voir Dire - JURY OUT

1 A. From '95 to '96.

2 Q. Okay. Do you know any of his family?

3 A. Yes, I do.

4 Q. All right. Have any of them ever discussed this
5 matter with you?

6 A. No.

7 Q. Ever discussed it in your presence?

8 A. Uh-uh.

9 Q. Based on what you have heard or read in this, about
10 this case and based on your relationships with Mr. Golden or
11 Mr. Flowers, have you formed an opinion as to the guilt or
12 innocence of Mr. Flowers in this matter?

13 A. No, I haven't.

14 Q. All right. If you were selected as a juror in this
15 case, could you listen to the evidence that comes from the
16 witness stand, take my instructions on the law at the end of
17 the case, apply them to the facts as you see them, then
18 discuss that with your fellow jurors, and make your decision
19 based on those factors rather than what you have heard or
20 your relationships with these other people?

21 A. Yes, I could.

22 Q. Do you know of any reason that you could not be
23 fair and impartial?

24 A. No.

25 Q. Okay. Ms. Bibbs, yesterday when I was asking you
26 some of the questions, one of them I asked was about the
27 death penalty, and you indicated to me at that time that you
28 had some opposition to the death penalty. Is that correct?

29 A. Right.

Individual Voir Dire - JURY OUT

1 Q. Is that a religious or philosophical belief or just
2 a personal belief?

3 A. Well, I just can't see myself, you know.

4 Q. It is okay; I just need to know.

5 A. Well, taking nobody else's life. That's the way I
6 feel about it.

7 Q. Okay. This is a case where that may be one of the
8 possibilities. The first thing that happens, as I told you
9 yesterday, is we have a trial to determine whether or not
10 Mr. Flowers is guilty of these things he is charged with.
11 The State at that time, during that part of the case must
12 prove his guilt beyond a reasonable doubt. He is presumed
13 innocent, as I told you yesterday, until such time as the
14 State proves his guilt beyond a reasonable doubt. He does
15 not have to put on any proof, and he does not have to
16 testify, and if he doesn't testify, I will tell the jury that
17 they can't use that fact against him. Do you understand all
18 that?

19 A. Yes, I do.

20 Q. Okay. If after all that, the jury determines
21 beyond a reasonable doubt that he is guilty and so returns a
22 verdict, then we will proceed to the second phase of the
23 trial in which the options will be the death penalty or life
24 imprisonment. At that phase of the trial, the State will put
25 on evidence of aggravating circumstances that would weigh in
26 favor of the death penalty. The Defendant in all likelihood
27 will put on mitigating factors which would be facts about,
28 fairly unlimited, but facts about Mr. Flowers and his life,
29 his past life and who he is and those kind of things that

Individual Voir Dire - JURY OUT

would be factors tending to weigh against the imposition of the death penalty.

After you had heard all the evidence at that part of the trial, then I would give an instruction to the jury that would tell them what those aggravating and mitigating circumstances were and how they are to consider them in reaching a verdict in that case. And then the jury would have to determine what the penalty was at that time. If I told you or instructed you as a juror that the law authorized the imposition of the death penalty and you found from the facts that the facts warranted it, could you impose the death penalty?

A. No.

Q. Okay. Thank you, ma'am.

INDIVIDUAL VOIR DIRE BY MR. EVANS:

Q. Excuse me just one minute. I have got just a few questions for you. Are you doing all right this evening, Ms. Bibbs?

A. Sir?

Q. Are you doing all right this evening?

A. Yeah, I'm okay.

Q. I want to follow up just a little bit on some things the Judge went into. Now you actually worked with the Defendant from '95 to '96?

A. Right.

Q. And that was at Richardson Brothers?

A. Right.

Q. And I think you work at KI now; is that right?

A. I was laid off.

Individual Voir Dire - JURY OUT

1 Q. Okay, and some of his family works there; is that
2 right?

3 A. Right.

4 Q. Who all do you work with there?

5 A. When I'm working there, with Priscilla and Archie,
6 he left.

7 Q. Okay, and that is Archie, Jr., his brother.

8 A. Right.

9 Q. Is Connie Moore still working out there?

10 A. Yes.

11 Q. And that was his girlfriend. Are you aware of
12 that?

13 A. Yes.

14 Q. So you have worked with the Defendant. You have
15 worked with his brother. You have worked with his sister,
16 and you have worked with his girlfriend. All right, now the
17 reason I bring that up, what we are looking at here today; we
18 are trying to find a jury that has no outside influences that
19 will interfere with their decision in court. Now everybody
20 can be good jurors on certain cases, but there are certain
21 cases, there are cases that I might not be a fair juror on
22 because of relationships that I had. If it's somebody that
23 is close kin to me that is on a jury, I might not be a good
24 juror for that particular case because I might have an
25 influence one way or another. Do you understand that?

26 A. Right.

27 Q. The reason I'm going into that, because of all of
28 these relationships that you have with him and his family,
29 don't you think that that would interfere with your being

Individual Voir Dire - JURY OUT

1 able to sit up here and listen to the evidence in this case?

2 A. No.

3 Q. You don't think it would have any bearing on it?

4 A. (Juror shakes her head.)

5 Q. You think that as far as the guilt or innocence
6 part of the trial, that you could disregard all of that,
7 listen to the evidence, and base your decision only on what
8 comes out in the courtroom?

9 A. Right.

10 Q. And at this point you have no opinion as to guilt
11 or innocence?

12 A. No.

13 Q. And what that would follow up on is that before you
14 reached an opinion as to guilt or innocence, you would listen
15 to the evidence that comes out in court and listen to the
16 instructions that the Judge gives you; is that right?

17 A. Right.

18 Q. All right. Then we go to the second phase. If the
19 jury convicts this Defendant over here, then he is facing two
20 penalties. One is death and one is life. Now you have told
21 the Judge that you have strong beliefs against the death
22 penalty; is that correct?

23 A. Yes, I do.

24 Q. Now because of those beliefs, are they so strong
25 against the death penalty that even if the Judge told you
26 that the death penalty was authorized and the facts justified
27 it, that you yourself could not vote for the death penalty?

28 A. Talking about what would I do?

29 Q. Not in this case, but in any case. I'm asking,

Individual Voir Dire - JURY OUT

1 what I'm asking right now is in any case. If the Judge told
2 you that the law authorized it and the facts justified it,
3 could you vote for the death penalty?

4 A. Well, no. I would just have to do a lot of praying
5 and hoping that he wouldn't get the death penalty, that he
6 would get life in prison.

7 Q. So you would automatically vote for life in prison?

8 A. Right.

9 Q. And wouldn't consider the death penalty?

10 A. No.

11 Q. And I want to go one step further. If you were
12 picked as a juror on this particular case, because you know
13 him and have worked with him and know his family and worked
14 with them, would that make it even harder for you to consider
15 the death penalty?

16 A. Probably so.

17 Q. And again for that reason, would that make it to
18 where you could not be a fair and impartial juror on this
19 particular case?

20 A. Well, yeah, I could be fair, but I couldn't be fair
21 when it comes to the death penalty.

22 Q. Okay, and that is either against him or anybody?

23 A. Right.

24 BY MR. EVANS: That's all, Your Honor.

25 BY MR. DE GRUY: No questions, Your Honor.

26 BY THE COURT: You may step down.

27 (Juror 95, Ms. Bibbs, leaves the courtroom.)

28 BY THE COURT: Susan Cottingham.

29 BY MR. EVANS: Move for cause.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Oh, yeah.

2 **BY MR. DE GRUY:** No objection.

3 **BY THE COURT:** She can go.

4 (JUROR NO. 96, MS. SUSAN ANNETTE COTTINGHAM, enters
5 the courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. State your name, please.

8 A. Susan Annette Cottingham.

9 Q. Ms. Cottingham, have you ever heard anything about
10 this case?

11 A. I have heard bits and pieces, but not a whole lot.

12 Q. Where do you live in the county?

13 A. I live in Eskridge.

14 Q. You live in Eskridge, okay. Do you recall when
15 this happened?

16 A. I was driving a truck at the time. I wasn't here.

17 Q. All right. Do you remember how long after it
18 happened that you heard about it? Approximately?

19 A. Oh, say two or three weeks. You know, we would
20 come home, and we would see the paper but that is--

21 Q. Have you seen or heard any media coverage of it?

22 A. The only thing I have seen is the newspaper last
23 week.

24 Q. Okay.

25 A. The article last week.

26 Q. Have you heard any community talk or street talk
27 about this?

28 A. That's what I have heard. That's--

29 Q. Did it, was it like gossip?

Individual Voir Dire - JURY OUT

1 A. Oh, yeah. That's what I take it as.

2 Q. Did it come from anybody that purported to actually
3 know what happened?

4 A. No.

5 Q. Did you know any of the victims in this case?

6 A. No, sir.

7 Q. Did you know any of their family?

8 A. No. Not that I know of.

9 Q. Do you know Mr. Flowers?

10 A. No, sir.

11 Q. Do you know any of his family?

12 A. Uh-uh.

13 Q. Okay, based on what you have heard or read,
14 Ms. Cottingham, have you formed any opinion about the guilt
15 or innocence of Mr. Flowers?

16 A. No.

17 Q. Is there anything, any reason that you feel that
18 you could not be fair and impartial in this case?

19 A. No.

20 Q. Okay. If you were sitting as a juror, if I seated
21 you as a juror, could you listen to the evidence as it comes
22 from the witness stand, take my instruction on the law at the
23 end of the case, apply them to the facts as you see them, and
24 discuss it with your fellow jurors and reach a decision based
25 on that?

26 A. Yes, sir.

27 Q. Okay.

28 BY THE COURT: Mr. Evans.

29 BY MR. EVANS: Thank you, Your Honor.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY MR. EVANS:

Q. Good evening, Ms. Cottingham.

A. Good evening.

Q. As the Judge told you yesterday morning, in this phase in this trial or in any criminal trial, the defendant is presumed to be innocent. That is the way it should be because the burden of proof is on the State of Mississippi to prove to the jury that he is, in fact, guilty. You understand that?

A. Yes, sir.

Q. And following up on that, until such time as the State has put on proof beyond a reasonable doubt that he is, in fact, guilty, he is even protected with a presumption that he is not guilty. He has to prove nothing to the jury. You understand that?

A. Yes, sir.

Q. Now I think you have stated that you have heard some stuff about the case, but not much. Whatever you have heard, can you disregard anything that you have heard, come into the courtroom as a juror, listen to the evidence as it comes out in the courtroom, listen to the instructions that the Court gives you, and base your decision strictly on that and nothing else?

A. Yes.

Q. All right, that would be as to the first phase. The first phase deals strictly with guilt or innocence. In that phase the jury isn't even supposed to consider the penalties. You understand that?

A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. If he is convicted, then we will go into a second
2 phase or a sentencing phase. In that phase the State will
3 put on evidence that is called aggravating circumstances.
4 What we will be attempting to do is show the jury why he
5 should receive the penalty of death. The Defense will put on
6 evidence of mitigating circumstances, and the Court will
7 instruct you what you can look at, what you can't look at,
8 things like that, or what you can look at. But basically,
9 it's unlimited. Mitigating circumstances are situations
10 about his life or reasons that the Defense wants to present
11 to a jury to show the jury that they think the sentence
12 should be life. You understand that?

13 A. Yes, sir.

14 Q. Once both sides have put that on, then the Judge
15 will instruct the jury again on what the law is. In that
16 instruction the Judge will tell the jury how they are to look
17 at the evidence, what they are to do step by step in an
18 attempt to determine which penalty it should be. Can you
19 tell us that if you are picked as a juror, you will listen to
20 the evidence that both sides puts on and base your decision
21 of what the penalty should be only after hearing both sides
22 and hearing the instructions that the Court gives?

23 A. Yes.

24 Q. In other words, you would not automatically vote
25 for a life sentence, or you would not automatically vote for
26 a death penalty?

27 A. No, sir.

28 Q. It would depend on the evidence in the case as it
29 was presented and the law that the Judge tells you?

Individual Voir Dire - JURY OUT

1 A. Correct.

2 BY MR. EVANS: Nothing further, Your Honor.

3 BY MR. DE GRUY: Just a few questions.

4 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

5 Q. Ms. Cottingham, I want to make sure you understand
6 that the second phase that Mr. Evans is talking about only
7 happens if all twelve jurors agree that a person is guilty of
8 capital murder.

9 A. Right.

10 Q. And in Mississippi that would be killing during the
11 commission of a robbery?

12 A. Uh-hum.

13 Q. You understand that?

14 A. Right.

15 Q. So when you say you are willing to consider other
16 factors, additional evidence when we go into the second
17 phase, it's not going to be evidence that the killing was an
18 accident or self-defense or anything like that. That would
19 be defenses to a crime. That wouldn't be mitigation
20 evidence. Do you understand?

21 A. Right. Yes, sir.

22 Q. So these would be facts perhaps completely
23 unrelated to the crime charged. Is that the type of thing
24 that you could consider in reaching your sentencing decision?

25 A. Yes.

26 Q. Now you are a, I guess based on your answers, it
27 would be fair to say you are a general supporter of the death
28 penalty?

29 A. Yes. Yes.

Individual Voir Dire - JURY OUT

1 Q. And I would just like to know if you could tell me
2 is it -- do you lean in favor of the death penalty? I guess
3 the best way to ask you is do you think we as a state use it
4 enough, not enough?

5 BY MR. EVANS: Your Honor, I object--

6 BY THE JUROR:

7 A. -- I don't have an opinion.

8 BY MR. EVANS: That is not a proper question.

9 BY THE COURT: Well, he has asked it numerous
10 times today, and I have let him do it. So I'm going
11 to let him do it this time.

12 BY THE JUROR:

13 A. I don't have an opinion as to how much it is used.
14 You know, my opinion on the death penalty is I think it is
15 right if it is deserved.

16 Q. And when you say deserved, you mean you look at the
17 evidence in the case?

18 A. Correct.

19 Q. Everything that the Judge tells you you can
20 consider?

21 A. Right.

22 Q. And it's not necessarily, you know, what the person
23 has been convicted of - capital murder. You would be, you
24 want to listen to other evidence, or you would be willing to
25 listen to other evidence in addition?

26 A. Correct.

27 BY MR. DE GRUY: That's all I have, Your Honor.

28 BY THE COURT: You may step down, Ms. Cottingham.
29 (Juror 96, Ms. Cottingham, leaves the courtroom.)

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** What do y'all say to her?

2 **BY MR. EVANS:** No objection.

3 **BY MR. DE GRUY:** No objection.

4 **BY THE COURT:** She can go to the room.

5 **BY THE COURT:** Ms. Burchfield is tired, so we are
6 going to take a few minutes.

7 (FOLLOWING THE AFTERNOON RECESS, INDIVIDUAL VOIR
8 DIRE CONTINUED IN OPEN COURT WITH ALL COUNSEL AND THE
9 DEFENDANT PRESENT:)

10 **BY THE COURT:** Number 97, Joella Mitchell.

11 (JUROR NO. 97, MS. JOELLA J. MITCHELL, enters the
12 courtroom.)

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. You may have a seat, Ms. Mitchell. Would you state
15 your name for the record, please, ma'am.

16 A. Joella Mitchell.

17 Q. Ms. Mitchell, have you ever heard anything about
18 this case?

19 A. No, not really.

20 Q. Okay. Did you know that it happened?

21 A. Yes, I did.

22 Q. How did you know that?

23 A. I was at work.

24 Q. Okay, where did you work at that time?

25 A. Multicraft.

26 Q. And there was another lady here while ago that said
27 that somebody came through there telling that it happened.
28 Is that how it happened?

29 A. Yes.

Individual Voir Dire - JURY OUT

1 Q. Okay. Have you heard any street talk or gossip
2 about this case?

3 A. No, I haven't.

4 Q. Have you read about it in the newspaper or listened
5 about it on the radio or seen anything on television about
6 it?

7 A. That has been some years ago. I really don't know.

8 Q. Okay, you did see something, but you don't
9 remember; is that right?

10 A. Did I hear something?

11 Q. Yes.

12 A. That it was a murder. That's all I heard.

13 Q. Did you know any of the victims?

14 A. Yes, sir. I do.

15 Q. Who did you know?

16 A. I know Curtis. I know his mother and his father.

17 Q. Okay, that would be the Defendant. Did you know
18 any of the victims, the people that died?

19 A. No, I didn't.

20 Q. Did you know any of -- well, I assume then you
21 don't know any of their families?

22 A. Yes, I do. I have been knowing them all my life.

23 Q. No, I'm not talking about the Flowers now. I'm
24 talking about the people that died. Do you know any of their
25 families?

26 A. No, I didn't.

27 Q. Okay. Now you know Mr. Flowers?

28 A. Yes, I do.

29 Q. And you know his family?

Individual Voir Dire - JURY OUT

1 A. Yes, I do.

2 Q. Do you live close to them?

3 A. Yes, I do.

4 Q. Are you friends with them?

5 A. Yes, I am.

6 Q. And you have been friends with them for how long?

7 A. It has been about 23 years.

8 Q. Okay. Based on your relationship with them and
9 what you have heard about this case, have you formed an
10 opinion as to the guilt or innocence of Mr. Flowers?

11 A. Could you state that again, please.

12 Q. Based on what you have heard about this case and
13 based on your relationship with the Flowers, have you formed
14 an opinion as to the guilt or innocence of Mr. Flowers?

15 A. Not guilty.

16 Q. Okay. So you have formed an opinion then; is that
17 correct?

18 A. Yes, I have.

19 Q. Would that opinion keep you from being a fair and
20 impartial juror in this case?

21 A. No, it wouldn't.

22 Q. All right. If I seated you as a juror in this
23 case, could you listen to the evidence that comes from the
24 witness stand and take my instructions on the law at the end
25 of the trial, apply that to the facts as you see them, then
26 discuss that with fellow jurors, and make your decision based
27 on that regardless of what your relationship with the Flowers
28 is?

29 A. I couldn't do that, sir.

Individual Voir Dire - JURY OUT

1 Q. Okay.

2 BY MR. EVANS: I'm sorry; I didn't hear the last
3 one.

4 BY THE COURT: She said she could not do, she
5 could not listen to the evidence and make a decision
6 on that.

7 BY MR. EVANS: Okay, based on that, the State has
8 no questions, Your Honor.

9 BY MR. DE GRUY: No questions.

10 BY THE COURT: All right, you may step down,
11 ma'am.

12 BY A JUROR: Where do I go?

13 BY THE COURT: You can go with that lady.

14 (Juror 97, Ms. Mitchell, leaves the courtroom.)

15 BY THE COURT: Okay, I strike her for cause.
16 Mark Sykes.

17 (JUROR NO. 99, MR. MARK WILBURN SYKES, enters the
18 courtroom.)

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. Have a seat right there. State your name, please,
21 sir.

22 A. Mark Wilburn Sykes.

23 Q. Mr. Sykes, have you ever heard anything about this
24 case?

25 A. Yes, sir.

26 Q. How did you hear it?

27 A. News, paper, radio. My family all lives here in
28 Winona.

29 Q. Okay, did you know any of the victims?

Individual Voir Dire - JURY OUT

1 A. I knew BoBo, Derrick. And I knew Ms. Tardy
2 vaguely, but I did know her.

3 Q. How close did you know BoBo?

4 A. He was, my sister was about a year younger than
5 him, and I knew him fairly well. I mean we recognized each
6 other and were very amicable.

7 Q. Okay. Have you ever discussed this matter with any
8 members of his family or they discussed it in front of you?

9 A. No more than the rumors when I was living in
10 Starkville, the rumors that were going around.

11 Q. Did that come from his family or was that just--

12 A. From friends and mutual acquaintances and things.

13 Q. Okay. Did you know Mr. Flowers or do you?

14 A. No.

15 Q. Do you know any of his family?

16 A. No, sir.

17 Q. Were you living at Starkville at the time?

18 A. I was living in Starkville at the time. Then we
19 moved to Pensacola.

20 Q. Okay. How long have you been back here?

21 A. A year and a half.

22 Q. Mr. Sykes, based on what you have heard and your
23 relationship with some of the victims, have you formed an
24 opinion in this matter as to the guilt or innocence of Mr.
25 Flowers?

26 A. Yes, sir.

27 Q. Would that opinion keep you from being a fair and
28 impartial juror?

29 A. I believe my mind is made up; yes, sir. I believe

Individual Voir Dire - JURY OUT

it would.

Q. Thank you, sir.

BY MR. EVANS: No questions, Your Honor.

BY MR. DE GRUY: No questions.

BY THE COURT: Mr. Sykes, thank you, sir.

BY A JUROR: Thank you.

(Juror 99, Mr. Sykes, leaves the courtroom.)

BY THE COURT: Okay, the Court is going to excuse him for cause. Any objection?

BY MR. EVANS: None from the State.

BY MR. DE GRUY: No, sir.

BY THE COURT: Michelle Knox-Russell.

(JUROR NO. 100, MS. MICHELLE A. KNOX-RUSSELL, enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. Would you state your, name, please.

A. Michelle Knox-Russell.

Q. Ms. Knox-Russell, have you ever heard of this case?

A. Yes, I have.

Q. How did you hear about it?

A. At the time I was living in Chicago. I heard it in the national news.

Q. Oh, you heard it on the national news?

A. Uh-huh.

Q. Okay. And when did you move back down here?

A. About a year and a half ago.

Q. Okay. Well, have you heard anything other than that national news, like any street talk or anything like that?

Individual Voir Dire - JURY OUT

1 A. Of course, yes.

2 Q. Okay. Did you know any of the victims in this
3 case?

4 A. Yes, I did.

5 Q. Which one or ones?

6 A. Ms. Tardy.

7 Q. You knew Ms. Tardy?

8 A. Yes.

9 Q. Did you know Mr. Golden?

10 A. Um, just by name.

11 Q. Okay. Do you know any of their family?

12 A. Yes.

13 Q. Ms. Tardy's family?

14 A. Yes.

15 Q. Any of the others?

16 A. No.

17 Q. Like Mr. Golden's family, did you know any of them?

18 A. No, just Ms. Tardy.

19 Q. Have you ever had any discussions with any of the
20 relatives about this case?

21 A. No.

22 Q. Do you know Mr. Flowers?

23 A. Yes.

24 Q. How do you know him?

25 A. Um, his parents go to my parents' church.

26 Q. Okay. Have you ever had any discussions with his
27 family about this matter?

28 A. No.

29 Q. Or have they in your presence or anything like

Individual Voir Dire - JURY OUT

that?

A. No.

Q. Have you seen any media coverage other than what you saw up in Chicago?

A. Newspaper in Chicago.

Q. Okay. Have you seen any down here since you have been down here?

A. No.

Q. Based on what you have heard or read and maybe any street talk or gossip that you might have heard or any relationship you might have with these, any of these parties, have you formed an opinion as to the guilt or innocence of Mr. Flowers?

A. Somewhat.

Q. Okay. Would that opinion keep you from being a fair and impartial juror in this case?

A. I would say it all depends. So I don't know. I don't think so.

Q. Here is kind of what the test is. If you are a juror, could you consider the evidence that comes from the witness stand, take my instructions on the law at the end of the case and apply those to the facts as you see them, then discuss that with your fellow jurors, and then reach a decision based on that rather than what your relationships might be or what you might have heard or read?

A. I don't think so.

BY THE COURT: Thank you, ma'am.

BY MR. EVANS: No questions.

BY MR. DE GRUY: One question.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

Q. Are you telling us that you could not fairly listen to the evidence and reach a decision based on the evidence?

A. Um, I don't -- well, because I have my own opinion.

Q. Uh-hum. And that's what we are asking you. Is that an opinion that is so strong you couldn't even listen to evidence? You have made up your mind?

A. Yes.

Q. Okay, thank you.

BY MR. DE GRUY: That is all.

BY THE COURT: Thank you, ma'am. You may step down.

(Juror 100, Ms. Knox-Russell, leaves the courtroom.)

BY THE COURT: I'm going to excuse her for cause. Any objection?

BY MR. EVANS: None from the State.

BY MR. DE GRUY: No objection.

BY THE COURT: Dawn Ford.

(JUROR NO. 101, MS. NYKEEM DAWN FORD, enters the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please, ma'am.

A. Nykeem Dawn Ford.

Q. Ms. Ford, have you ever heard anything about this case?

A. Yes, sir.

Q. How did you hear that?

A. Just through people talking.

Individual Voir Dire - JURY OUT

1 Q. Okay, which people?

2 A. Oh, just like residents of the neighborhood.

3 Q. Okay, do you remember when this occurred?

4 A. Um, well, it was the year that I graduated. I had
5 just came home from school.

6 Q. Okay. Did you read about it in the newspaper?

7 A. Yes, sir. I have read, you know, little things in
8 the newspaper about it.

9 Q. Have you heard stuff on the radio and television
10 about it?

11 A. No, sir.

12 Q. Did you know any of the victims in this case?

13 A. I had been in the store before shopping with my
14 mother.

15 Q. Okay, so you knew Ms. Tardy?

16 A. Right. Yes, sir.

17 Q. Did you know any of the others?

18 A. Not personally. Just like I said, shopping in the
19 store.

20 Q. Do you know any of the families of the victims?

21 A. No, sir.

22 Q. Do you know Mr. Flowers?

23 A. No, sir.

24 Q. Do you know any of his family?

25 A. No. No, sir.

26 Q. Based on what you have heard about this case, have
27 you formed any opinions as to the guilt or innocence of Mr.
28 Flowers?

29 A. Um, just due to the trials, the previous trials and

Individual Voir Dire - JURY OUT

1 the outcome of those, you know; I do have some inkling and
2 idea, you know, on how the case went.

3 Q. Okay, you are aware of the other trials?

4 A. Yes, sir.

5 Q. Are you aware of the outcome of those other trials?

6 A. Yes, sir.

7 Q. Do you think that would have an effect on you in
8 relation to being on the jury in this case?

9 A. I think so because I mean it always weighs in your
10 mind.

11 Q. Okay. Do you think that would prevent you from
12 being a fair and impartial juror in this case?

13 A. Yes, sir. I think so.

14 BY MR. EVANS: No questions.

15 BY MR. DE GRUY: No questions, Your Honor.

16 BY THE COURT: Thank you, Ms. Ford. You may step
17 down.

18 (Juror 101, Ms. Ford, leaves the courtroom.)

19 BY THE COURT: I excuse her for cause. Any
20 objection?

21 BY MR. EVANS: None from the State.

22 BY MR. DE GRUY: No.

23 BY THE COURT: David Earl Daves.

24 (JUROR NO. 102, MR. DAVID EARL DAVES, enters the
25 courtroom.)

26 INDIVIDUAL VOIR DIRE BY THE COURT:

27 Q. State your name.

28 A. David Earl Daves.

29 Q. Mr. Daves, have you ever heard about this case?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. How did you hear about it?

3 A. Living in town, people talking, news, radio, TV.

4 Q. Did you know any of the victims?

5 A. Yes, sir. I did.

6 Q. Which ones?

7 A. BoBo Stewart, I knew. The Rigby girl, I knew.

8 Q. Did you know Ms. Tardy?

9 A. Yes, sir, but not as much as the other two.

10 Q. Okay. Have you ever -- did you know their
11 families?

12 A. Yes, sir.

13 Q. Have any of them ever discussed this matter with
14 you or in your presence?

15 A. No, sir.

16 Q. Do you know Mr. Flowers?

17 A. No, sir. I don't.

18 Q. Do you know any of his family?

19 A. I know his father on sight. That's it.

20 Q. He is the one that works at Wal-Mart?

21 A. Yes, sir.

22 Q. Is that how you know him?

23 A. Yes, sir.

24 Q. Has he ever discussed this matter with you?

25 A. No, sir.

26 Q. Based on what you have heard -- well, let me go
27 back. The talk that you heard, is that just street talk or
28 gossip?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. Did it ever come from anybody that purported to
2 know the facts of this case --

3 A. No, sir.

4 Q. Based on what you have heard or read in the media
5 or street talk or gossip, have you formed an opinion as to
6 the guilt or innocence of Mr. Flowers in this matter?

7 A. Yes, sir.

8 Q. Would that opinion keep you from being a fair and
9 impartial juror in this case?

10 A. Yes, sir. I'm afraid so.

11 BY THE COURT: Mr. Evans?

12 BY MR. EVANS: No questions.

13 BY THE COURT: Mr. de Gruy?

14 BY MR. DE GRUY: No questions.

15 BY THE COURT: Thank you, sir.

16 (Juror 102, Mr. Daves, leaves the courtroom.)

17 BY THE COURT: Okay, I'm going to excuse him for
18 cause. Any objection?

19 BY MR. EVANS: No, sir.

20 BY MR. DE GRUY: No, Your Honor.

21 BY THE COURT: Sonja Kay Lanahan.

22 (JUROR NO. 104, MS. SONJA KAY LANAHAN, enters the
23 courtroom.)

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. State your name, please, ma'am.

26 A. Sonja Kay Lanahan.

27 Q. Ms. Lanahan, have you ever heard about this case?

28 A. I sure have.

29 Q. How did you hear about it?

Individual Voir Dire - JURY OUT

1 A. In the news, in the paper.

2 Q. Did you ever hear street talk or gossip about it?

3 A. I sure did.

4 Q. Did you know any of the victims?

5 A. I knew the little guy's daddy a long time ago.

6 Q. BoBo Stewart's father?

7 A. A long, long time ago.

8 Q. Okay. Have you ever had any discussions with
9 BoBo's family about this matter?

10 A. No, I haven't.

11 Q. Or in your presence?

12 A. No, I haven't.

13 Q. Do you know Mr. Flowers?

14 A. No, I don't.

15 Q. Do you know any of his family?

16 A. Mr. Flowers?

17 Q. Uh-huh.

18 A. No, I don't.

19 Q. Okay. Based on what you have heard, Ms. Lanahan,
20 have you formed an opinion as to the guilt or innocence of
21 Mr. Flowers?

22 A. Guilty.

23 Q. I assume then that opinion would keep you from
24 being fair and impartial; is that correct?

25 A. True.

26 Q. Okay.

27 BY MR. EVANS: No questions.

28 BY MR. DE GRUY: No questions.

29 BY THE COURT: Thank you, ma'am.

Individual Voir Dire - JURY OUT

1 (Juror 103, Ms. Lanahan, leaves the courtroom.)

2 BY THE COURT: Okay, I excuse her for cause. Any
3 objection?

4 BY MR. EVANS: No, sir.

5 BY MR. DE GRUY: No, sir.

6 BY THE COURT: Okay, the next three I have is
7 going to be 41A is going to be her number.

8 BY MR. EVANS: Which one is that?

9 BY THE COURT: I'm going to give you that. I'm
10 going to give you the number first. You haven't got
11 her name. 41A, Joann Murry. I don't know that I have
12 got that spelled right. Do you have it, how it is
13 spelled?

14 BY THE CLERK: J-O --

15 BY THE COURT: --Wait, wait, wait, not yet.

16 BY THE CLERK: J-O-A-N-N M-U-R-R-Y.

17 BY THE COURT: J-O?

18 BY THE CLERK: J-O-A-N-N.

19 BY THE COURT: So it is Joan Murry?

20 BY THE CLERK: I don't know whether it's Joan or
21 Joann. She will have to tell you.

22 BY THE COURT: We have numbered her as 41A.
23 That's where she would be in the random selection.
24 The next one is 53A, and that is Ida M. Witty. The
25 next one is 102A, Luther Robinson. None of these
26 three have been voir dired at all. They came in late,
27 and they were qualified. I'm going to go into the
28 questions we have been asking mainly about whether
29 they know anything about this case, and if they have

Individual Voir Dire - JURY OUT

1 got an opinion, and then I will ask them the death
2 penalty questions. And if we get further than that,
3 then I'm going to go back and do the whole voir dire
4 on them, and y'all can follow that up. Okay?

5 **BY MR. EVANS:** Yes, sir.

6 **BY THE COURT:** Okay, Ms. Murry.

7 (JUROR NO. 41A, MS. JOANN MURRY, enters the
8 courtroom.)

9 INDIVIDUAL VOIR DIRE BY THE COURT:

10 Q. Ms. Murry, state your name for the record.

11 A. Joann Murry.

12 Q. Okay. Ms. Murry, have you ever heard anything
13 about this case?

14 A. No, sir.

15 Q. Not at all?

16 A. Nothing but--

17 Q. Do you remember when it occurred?

18 A. No, I was just moving over here, I think.

19 Q. Okay. All right, how long have you lived here?

20 A. I moved over here in '96, and then I left in 2000,
21 and I moved back in 2002.

22 Q. Okay. Have you heard any media coverage of this?

23 A. No, sir.

24 Q. No radio, no television, no newspaper?

25 A. No, sir. I'm not no television or radio person.

26 Q. Okay. Did you know any of the victims in this
27 case?

28 A. No, sir.

29 Q. Okay. Do you know Mr. Flowers?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Do you know any of his family?

3 A. I know his sister, I think; Priscilla.

4 Q. Okay. Do you work with her or anything like that,
5 or you just know her?

6 A. I work with her.

7 Q. You work with her?

8 A. Not now. I have.

9 Q. When was that?

10 A. In '99.

11 Q. She ever talk to you about this case?

12 A. No, sir.

13 Q. Has anybody ever talked to you about this case?

14 A. No, sir.

15 Q. Have you formed any opinion in this case about the
16 guilt or innocence of Mr. Flowers?

17 A. No, sir.

18 Q. Do you know of any reason you couldn't be a fair
19 and impartial juror?

20 A. I don't believe in death penalty.

21 Q. Okay. Let me go back. Where were you living
22 before you moved here, Ms. Murry?

23 A. In Cleveland, Mississippi.

24 Q. Are you from here?

25 A. From the delta.

26 Q. From the delta. Then the first time you moved here
27 was after this occurred; is that right?

28 A. I don't know. I moved here in '96.

29 Q. Okay. Well, about the same time then. Okay, all

Individual Voir Dire - JURY OUT

1 right. Do you have a religious or philosophical belief
2 against the death penalty or just a personal belief against
3 it?

4 A. I just don't believe in it.

5 Q. So you are opposed to it; is that correct?

6 A. Yes.

7 Q. Let me explain how this case works. In the
8 first -- there are two, there can be two phases of this case.
9 In the first phase the jury is to consider only the guilt or
10 innocence of Mr. Flowers. Mr. Flowers is presumed innocent
11 until such time as the State proves his guilt beyond a
12 reasonable doubt. He does not have to put on any proof nor
13 does he have to testify. If he does not testify, I will tell
14 the jury they can't hold that fact against him. Do you
15 understand all that?

16 A. Yes, sir.

17 Q. Do you understand that the jury would have, all
18 twelve jurors would have to find him guilty beyond a
19 reasonable doubt before they could return a verdict of
20 guilty?

21 A. Yes, sir.

22 Q. Okay. If that happens at the first phase of the
23 trial, then the next phase of the trial would be the penalty
24 phase of the trial. At that stage of the trial the jury
25 would have to consider whether to impose the death penalty or
26 whether to impose a life sentence. At that stage the State
27 would put on certain evidence to prove aggravating factors or
28 circumstances which would tend to weigh toward imposing the
29 death penalty. The Defendant would in all likelihood put on

Individual Voir Dire - JURY OUT

1 mitigating circumstances which would be the facts of the
2 Defendant's life and of the Defendant himself which would be
3 factors for the jury to weigh against imposing the death
4 penalty. And then I would give an instruction, a written
5 instruction to the jury and tell them how to consider the
6 aggravating circumstances and the mitigating circumstances
7 and the procedure that they would have to go through in order
8 to return a verdict in this case. When it got to that point,
9 I would have instructed the jury that the law has authorized
10 the imposition of the death penalty if they find that that
11 should happen. My question to you is if I have told you that
12 the law authorizes it and you find that the facts warranted
13 it, could you impose the death penalty?

14 A. No, sir.

15 Q. Okay.

16 **BY MR. EVANS:** Thank you, Your Honor.

17 INDIVIDUAL VOIR DIRE BY MR. EVANS:

18 Q. How are you doing, Ms. Murry?

19 A. All right, and you?

20 Q. All right. I just want to follow up on a few
21 things that the Judge went over. You say that you know the
22 Defendant's sister, Priscilla?

23 A. Yes.

24 Q. Do you know any of the rest of his family?

25 A. No, sir.

26 Q. Do you know him hisself?

27 A. No, sir.

28 Q. And how long have you known Priscilla?

29 A. We worked together at Master Design in '99. That's

Individual Voir Dire - JURY OUT

1 it.

2 Q. Master Design?

3 A. Yes.

4 Q. Okay, let me ask you this. Of course, one of the
5 things we are trying to determine is what jurors would have
6 any outside influence on this case or what jurors could come
7 in the courtroom and not have any influence one way or the
8 other and just listen to the evidence in the case. So based
9 on that, the fact that you have worked with his sister and
10 know his sister and know that he is the person that is being
11 tried here for capital murder, would that make it difficult
12 for you in this particular case to be a fair and impartial
13 juror on this case because you do know his sister and have
14 worked with her?

15 A. No, sir.

16 Q. It wouldn't?

17 A. (Juror shakes her head.)

18 Q. Okay. You don't know any of the rest of his family
19 as far as you know?

20 A. No, sir.

21 Q. Now on the death penalty issue, this is a capital
22 murder case, and it's a case that the death penalty, if it
23 gets to the penalty phase, will be one of the two possible
24 penalties. The jury, if it reaches that phase, could return
25 the death penalty, or the jury could return life. The way we
26 get to that is by the legal process. The State will be able
27 to put on certain evidence to the jury. It's evidence that
28 is called aggravating circumstances. And what that would be,
29 it would be evidence to try to justify to the jury that in

Individual Voir Dire - JURY OUT

1 this particular case the death penalty is the appropriate
2 punishment. Then the Defense will be able to put on what is
3 called mitigating circumstances. And in that, and it's
4 pretty much unlimited. What it is, it is telling the jury
5 different things about the Defendant's life, and they will be
6 trying to convince the jury that the appropriate sentence in
7 this case is a life sentence instead of death. Once both
8 sides have done that, then the Judge will read instructions
9 of law to the jury, and in those instructions the Judge will
10 tell the jury how they must view everything that has been put
11 on and what they must do step by step in arriving at what the
12 penalties should be. Now I assume from what you are saying
13 that your opinion against the death penalty is strong?

14 A. Yes, sir.

15 Q. Based upon that, if the Judge told you that the
16 death penalty was authorized in this case and if the facts
17 justified it, are your opinions against the death penalty so
18 strong that you yourself could not vote for the death
19 penalty?

20 A. I couldn't vote for it.

21 Q. Okay. And if you got to that phase, you would have
22 to just automatically vote for the life sentence because you
23 just don't believe in the death penalty?

24 A. Yes, sir.

25 BY MR. EVANS: Nothing further, Your Honor.

26 BY MR. DE GRUY: I have no questions, Your Honor.

27 BY THE COURT: Thank you, ma'am. You may step
28 down.

29 (Juror 41A, Ms. Murry, leaves the courtroom.)

Individual Voir Dire - JURY OUT

1 **BY THE BAILIFF:** There is one more, Eugene
2 Whitehead. He has got a number 11, said he wasn't
3 here yesterday.

4 **BY THE COURT:** Number 11? Where did he get the
5 11?

6 **BY THE BAILIFF:** Unless he got it this morning.
7 Let him wait until last?

8 **BY THE COURT:** Yeah, he can wait until last. We
9 will figure out what the deal is on him. I don't know
10 where he got a number if he wasn't here. We will
11 worry about that in a minute. Let's do these others.

12 **BY MR. EVANS:** Move for cause, Your Honor.

13 **BY MR. DE GRUY:** No objection.

14 **BY THE COURT:** Okay, I strike her for cause.
15 It's getting late in the day, boys. Let's see;
16 Ms. Witty.

17 (JUROR NO. 53A, MS. IDA MAE WITTY, enters the
18 courtroom.)

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. State your name, please, ma'am.

21 A. Ida Witty.

22 Q. Ms. Witty, have you ever heard anything about this
23 case?

24 A. I have, but it has been a while.

25 Q. Okay. How did you hear it?

26 A. People talking. On the news, newspaper.

27 Q. So you have seen media coverage of it; right?

28 A. Right.

29 Q. And the people that you heard talking about it, was

Individual Voir Dire - JURY OUT

1 that street talk or gossip, or was it people that purported
2 to know what the facts were?

3 A. I guess just street talk.

4 Q. Okay. Did you know any of the victims?

5 A. Yeah.

6 Q. Who?

7 A. I knew Robert. I knew Ms. Tardy when I see her,
8 and I knew the other lady when I see her. But I didn't know
9 the other one.

10 Q. Okay. Have you ever had any of their families
11 discuss this matter with you or in your presence?

12 A. No.

13 Q. Do you know the Flowers?

14 A. Yes.

15 Q. How well do you know them?

16 A. Pretty good.

17 Q. Okay, do you live around them?

18 A. Well, I work with them.

19 Q. Okay, which ones?

20 A. I worked with Curtis, Felicia, Archie, Prit, and I
21 work with Chris and Coreal.

22 Q. So you know them all; right, just about?

23 A. Yes.

24 Q. When was it that you worked with Curtis?

25 A. I guess it was back in the 90's. Somewhere
26 around--

27 Q. -- Where was that?

28 A. Back in, I would say from '92, I guess.

29 Q. But where?

Individual Voir Dire - JURY OUT

1 A. At Richardson Brothers across from Wal-Mart.

2 Q. Would you say you are good friends with them?

3 A. Very good friends.

4 Q. Okay. Based on what you have heard either in
5 street talk or gossip and from the media or your
6 relationships with the victims or with the Flowers family,
7 have you formed an opinion as to the guilt or innocence of
8 Mr. Flowers?

9 A. I have.

10 Q. Would that opinion keep you from being a fair and
11 impartial juror in this case?

12 A. No.

13 Q. You could be a fair and impartial juror for both
14 sides; is that correct?

15 A. Yes.

16 Q. Okay. If you were seated as a juror in this case,
17 could you listen to the evidence that comes from the witness
18 stand, take my instructions on the law at the end of the case
19 and apply them to facts as you see them; then discuss that
20 with your fellow jurors and then reach a verdict based on
21 those factors rather than the factors of you being friends
22 with the Flowers and knowing the Goldens and the media
23 coverage you have heard and the street talk you have heard?
24 Could you do that?

25 A. Yes.

26 Q. Okay. Ms. Witty, do you have a religious or
27 philosophical or personal belief against the death penalty?

28 A. I do.

29 Q. All right. If this case, as this case proceeds,

Individual Voir Dire - JURY OUT

1 the first phase would be the guilt phase. At that phase the
2 State would put on evidence to prove, to attempt to prove
3 Mr. Flowers' guilt. At that stage the Defendant is presumed
4 innocent until such time as the State proves his guilt beyond
5 a reasonable doubt. He does not have to put on any evidence
6 at that time nor does he have to testify. If he does not
7 testify, I will tell the jury that they couldn't hold that
8 fact against him, and then at the conclusion of that phase,
9 all twelve jurors would have to unanimously vote to find him
10 guilty beyond a reasonable doubt in order to convict him of
11 this. Do you understand that?

12 A. I do.

13 Q. Okay. If it gets to that, past that point, then it
14 goes to the second phase, and what is to be considered in the
15 second phase is the sentencing part of it. The two options
16 would be the death penalty, or they would be life in prison.
17 At that time the State would put on evidence to prove
18 aggravating circumstances or factors which would tend to
19 weigh toward the imposition of the death penalty. The
20 Defendant at that time in all likelihood would put on
21 mitigating circumstances which would be factors about
22 Mr. Flowers and his life and his family and whatever that
23 would weigh against the imposition of the death penalty. And
24 at the conclusion of that, I would give a written instruction
25 to the jury as to how they were to consider and weigh those
26 factors in coming up with a verdict and the instructions on
27 the procedure for them to arrive at a verdict. And after
28 weighing that and then, of course, the jury would have the
29 right to make whatever decision they wanted to make, but at

Individual Voir Dire - JURY OUT

1 some point in time there the decision would be either death
2 or life in prison.

3 The question I have for you is if I instructed you
4 that the law authorized the imposition of the death penalty
5 and you found that the facts warranted it, could you impose
6 the death penalty?

7 A. I could not.

8 **BY THE COURT:** Okay.

9 INDIVIDUAL VOIR DIRE BY MR. EVANS:

10 Q. How are you doing, Ms. Witty?

11 A. Fine.

12 Q. I would like to follow up a little bit on some
13 things that the Court went into with you. Now to start with,
14 you have pretty much worked with the entire Flowers family?

15 A. Right.

16 Q. You have worked with Curtis, and you are friends
17 with Curtis?

18 A. Right.

19 Q. You have worked with Felicia?

20 A. Right.

21 Q. I assume you are friends with Felicia?

22 A. Right.

23 Q. You have worked with Archie. Now is that Archie,
24 Jr.?

25 A. Right.

26 Q. And you are friends with him?

27 A. Right.

28 Q. You have worked with Chris?

29 A. Right.

Individual Voir Dire - JURY OUT

1 Q. Was that all? I may not have written them all
2 down. Was there anybody else?

3 A. Prit.

4 Q. Trent?

5 A. Prit. His sister.

6 Q. Prit? Okay. What other family members do you
7 know?

8 A. Well, I knew a lot of them; I just don't know a lot
9 of them by name.

10 Q. Basically, you know the whole family?

11 A. Well, one was my brother-in-law, ex-brother-in-law.
12 My sister was married to his uncle.

13 Q. Okay, so you are related to him by marriage?

14 A. Well, my sister is.

15 Q. Okay. So, and I think if I wrote it down,
16 basically what you said was you were very good friends with
17 the whole family?

18 A. Right.

19 Q. What we are looking at here today and, you know,
20 everybody has different friendships, different relationships;
21 so what we are trying to determine today is what jurors have
22 outside influences that might enter into their decision and
23 what jurors have no outside influence so that they could come
24 into the courtroom, listen to the evidence, and base their
25 decision strictly on the evidence. The fact that you are
26 such close friends with the entire family including the
27 Defendant, wouldn't that enter into your decision in this
28 case?

29 A. No.

Individual Voir Dire - JURY OUT

1 Q. It wouldn't?

2 A. No.

3 Q. You have said you already have an opinion on the
4 case?

5 A. I do.

6 Q. What is that opinion?

7 A. I don't believe in the death penalty.

8 Q. No, I'm talking about as far as in the guilt phase.
9 You said you already had an opinion?

10 A. What is my opinion?

11 Q. As to guilt or innocence.

12 A. Well, not guilty.

13 Q. Not guilty?

14 A. Right.

15 Q. All right. Knowing that you already have that
16 opinion that he is not guilty, don't you think that that
17 would keep you from being a fair and impartial juror in this
18 case?

19 A. It probably would be.

20 Q. That's what I'm trying to get at, and nobody is
21 judging you or anybody else. We are just trying to get to
22 the facts and determine who could come in here and be
23 impartial and be fair and impartial to both sides.

24 A. Well, I already have my opinion.

25 Q. You already have that opinion, and that opinion is
26 not going to change, is it?

27 A. No.

28 Q. Okay. And based upon that fact, you couldn't be
29 fair and impartial to the State in this case, could you?

Individual Voir Dire - JURY OUT

1 A. Well, I probably couldn't then because I already
2 have my opinion.

3 Q. Thank you, ma'am.

4 **BY MR. DE GRUY:** No questions, Your Honor.

5 **BY THE COURT:** Ms. Witty, you may step down.

6 (Juror 53A, Ms. Witty, leaves the courtroom.)

7 **BY THE COURT:** Luther Paul Robinson. Oh, wait;
8 yeah, you are right. I'm going to excuse her for
9 cause. Any objection?

10 **BY MR. EVANS:** No, sir.

11 **BY MR. DE GRUY:** No, sir.

12 **BY THE COURT:** Okay. Now Luther Paul Robinson.

13 (JUROR NO. 102A, MR. LUTHER PAUL ROBINSON, enters
14 the courtroom.)

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. State your name, please, sir.

17 A. Luther Paul Robinson.

18 Q. Mr. Robinson, have you heard anything about this
19 case?

20 A. Yes, sir.

21 Q. How did you hear it?

22 A. Through the radio and TV.

23 Q. Okay. Have you heard any street talk about it?

24 A. Not really.

25 Q. Did you know any of the victims?

26 A. No.

27 Q. Did you know any of their family?

28 A. Not personally.

29 Q. Do you know Mr. Flowers?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Do you know any of his family?

3 A. No, sir.

4 Q. Mr. Robinson, where do you live in the county?

5 A. Duck Hill.

6 Q. Okay. Have you formed any opinion about this case?

7 A. As far as?

8 Q. As far as-- I'm sorry. Have you formed an opinion
9 as to the guilt or innocence of Mr. Flowers?

10 A. No, sir.

11 Q. All right. Do you feel that you could be a fair
12 and impartial juror in this case?

13 A. Yes, sir. I think so.

14 Q. Okay. Mr. Robinson, do you have any religious,
15 philosophical or personal belief in opposition to the death
16 penalty?

17 A. No, sir.

18 Q. Okay. The first phase of the trial would be to
19 determine only whether or not Mr. Flowers is guilty of the
20 charges against him. At that time the State would put on
21 some evidence to that effect. The Defendant is presumed
22 innocent until such time as the State produces evidence to
23 prove his guilt beyond a reasonable doubt. He does not have
24 to testify at that time. If he does not testify, I will tell
25 the jury that they can't hold that fact against him, and he
26 also doesn't have to put on any proof. Do you understand
27 that?

28 A. Yes, sir.

29 Q. At that phase if the jury by a unanimous vote finds

Individual Voir Dire - JURY OUT

1 beyond a reasonable doubt that he is guilty and returns that
2 verdict, then we would go to the second phase. In that
3 second phase it is called the sentencing phase, and it would
4 be to determine whether he got the death penalty or whether
5 he got life in prison. At that phase the State would present
6 evidence of what is called aggravating circumstances or
7 factors that would tend to impose the death penalty, would be
8 in favor of the death penalty. The Defendant would put on
9 evidence about mitigating factors or circumstances which
10 could be anything about the Defendant's life or his family
11 and anything, just about anything in relation to him that
12 would be factors that would mitigate against the death
13 penalty and in favor of the life option on that.

14 After we got through with that proof, then I would
15 give the jury a written instruction that set forth those
16 aggravating circumstances and the mitigating circumstances,
17 and it would also tell the procedure that the jury should use
18 in order to weigh those things and how they are to return,
19 how to end up with a verdict after they had considered all
20 those and discussed it amongst each other. Do you understand
21 that that would be the procedure?

22 A. Yes, sir.

23 Q. If we get to that point, I will have told the jury
24 that the law authorizes the imposition of the death penalty
25 if they so find. My question to you is if the law authorizes
26 it and you find that the facts warranted the death penalty,
27 could you impose it?

28 A. If I find the facts; yes, sir; I could.

29 Q. Okay. Now Mr. Robinson, when was the first time

Individual Voir Dire - JURY OUT

1 you got here?

2 A. Yesterday.

3 Q. Were you here when I asked all the other questions?

4 A. Earlier yesterday?

5 Q. Yeah, when did you get here yesterday?

6 A. Around lunch time. I wasn't here first thing
7 yesterday morning.

8 Q. Okay, were you out there when I asked any of the
9 questions of the jury?

10 A. Uh-hum. Yes, sir.

11 Q. Okay. I'm going to have to ask some of them again
12 just to make sure I have gone over them with you. You
13 weren't here for all of it, were you?

14 A. No, sir, not the first.

15 Q. The attorneys in this case are Mr. Evans, Doug
16 Evans, who is the District Attorney. That is his assistant,
17 Clyde Hill, right there.

18 A. Yes, sir.

19 Q. This is Mr. Andre de Gruy from Jackson. Of course,
20 that is Mr. Flowers. That is Stacy Ferraro. She is one of
21 his attorneys, and that is Ray Charles Carter, also one of
22 his attorneys. Are you related by blood or marriage to any
23 of the attorneys?

24 A. No, sir.

25 Q. Do you know any of them?

26 A. Not personally.

27 Q. Have they ever -- do you know of them just by
28 reputation?

29 A. Just by--

Individual Voir Dire - JURY OUT

1 Q. Mr. Evans?

2 A. Mr. Evans, right.

3 Q. Okay. Have you ever had a situation where since he
4 represents the State in all cases, have you ever had a
5 situation where he was representing your side of a case?

6 A. No, sir.

7 Q. Have you ever been in a situation where he was on
8 the other side of a case?

9 A. No, sir.

10 Q. How about these others? I guess if you don't know
11 them--

12 A. Don't know them.

13 Q. -- they haven't been involved; is that right?

14 A. No.

15 Q. Okay. And I believe I have already asked you if
16 you knew Mr. Flowers; right, and you said you did not?

17 A. Right. Did not know him.

18 Q. Okay. You are not in law enforcement now, are you?

19 A. No, sir.

20 Q. Have you ever been in law enforcement?

21 A. No, sir.

22 Q. Do you have a relative that is in law enforcement
23 right now?

24 A. No.

25 Q. Do you have a relative who has ever been in law
26 enforcement?

27 A. No, sir.

28 Q. The way a case gets here is that the grand jury,
29 which is made up of 20 people, must render an indictment, or

Individual Voir Dire - JURY OUT

1 at least that's the way this case had to get here.

2 A. Right.

3 Q. Out of those 20 people, 12 of them had to vote to
4 indict somebody for it to get here. So obviously, it's not
5 unanimous; it is 12 out of 20. That grand jury will not hear
6 all the evidence. They will only hear the State's side, and
7 they will not hear the defense side. They won't hear my
8 instructions on the law, and they will hear some evidence
9 that would not be admissible at the trial of this case. Do
10 you understand that?

11 A. Yes, sir.

12 Q. If they return an indictment, all they have done is
13 decide that they think that a crime has been committed, and
14 they think there is enough evidence against some individual
15 for it to go to trial, and the indictment itself is simply a
16 paper document to get us to this point. When the trial
17 occurs, it takes 12 jurors who will hear both sides of the
18 case, get my instructions on the law, and then must
19 unanimously, all 12 vote to return a verdict. You understand
20 the difference there?

21 A. Yes, sir.

22 Q. All right, do you understand that an indictment is
23 absolutely no evidence of the Defendant's guilt whatsoever?

24 A. Right.

25 Q. And you cannot consider that as such?

26 A. Right.

27 Q. You tell me you will do that; you will not consider
28 that as evidence?

29 A. That's correct.

Individual Voir Dire - JURY OUT

1 Q. Okay. The burden on the case is beyond a
2 reasonable doubt. That is what the State's burden is. They
3 must, as I told you, you must presume that the Defendant is
4 innocent until such time as the State proves his guilt beyond
5 a reasonable doubt. Do you understand that principle?

6 A. I understand that.

7 Q. Do you think that the burden ought to be any higher
8 or lower or anything else other than reasonable doubt?

9 A. Nothing more.

10 Q. Okay. Have you ever been a victim of a crime?

11 A. No, sir.

12 Q. Has anybody in your family ever been a victim of a
13 crime?

14 A. (Juror shakes his head.)

15 Q. Mr. Robinson, have you - and I don't care to know
16 about any facts about this if it applies to you, but have you
17 ever been charged with any crime?

18 A. Like speeding.

19 Q. Well, other than stuff like traffic tickets and
20 stuff like that?

21 A. No, sir.

22 Q. Has anybody in your family ever been charged with
23 anything like that?

24 A. No, sir.

25 Q. Okay. At the end of the case I will give you, give
26 the jury instructions on the law. Will you follow those
27 instructions even if you don't agree with them?

28 A. Sure.

29 Q. Okay. I just get -- in this case you get to decide

Individual Voir Dire - JURY OUT

1 the facts, but I get to decide the law.

2 A. I understand that.

3 Q. Do you know of-- do you have a religious or
4 philosophical belief that prohibits you from passing judgment
5 on your fellow man?

6 A. No, sir.

7 Q. Do you know of any reason other than what we have
8 talked about why you could not be fair and impartial in this
9 case?

10 A. No, sir.

11 Q. Okay, I have just got one other question. There is
12 another Mr. Robinson from Duck Hill that is on this panel.
13 Are you kin to him?

14 A. No relation.

15 Q. No relation.

16 BY THE COURT: Questions?

17 BY MR. EVANS: Thank you, Your Honor.

18 INDIVIDUAL VOIR DIRE BY MR. EVANS:

19 Q. Good evening, Mr. Robinson.

20 A. Good evening.

21 Q. I have got a few questions I would like to go over
22 with you. You say you do not know the Defendant Curtis
23 Flowers?

24 A. No, sir, not personally.

25 Q. Do you know any member of his family?

26 A. No, sir.

27 Q. Just to make sure that we kind of go over it,
28 Archie Flowers is his father. He works at Wal-Mart here. Do
29 you know him?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. I think his mother -- Lola Flowers is his mother.
3 Do you know her?

4 A. No, sir.

5 Q. And you live in Duck Hill?

6 A. Yes, sir. I live in Duck Hill, and I have worked
7 out of Grenada for the last 16 or 17 years.

8 Q. Okay. Would it be pretty fair to say that most of
9 your contacts are either in Duck Hill or Grenada instead of
10 Winona?

11 A. That is correct.

12 Q. Now one of the witnesses that the Defense has
13 listed is a Nelson Forrest, who I believe is one of the
14 supervisors here in Montgomery County. Do you know him?

15 A. Not personally. I know of him as being a
16 supervisor, but I don't, you know, know him personally.

17 Q. All right. Are you aware of the Forrest singing
18 group?

19 A. Right.

20 Q. Is there anything about the fact that he may
21 testify as a witness for the Defense that would influence you
22 one way or the other?

23 A. No, sir.

24 Q. Now you know of no reason that you couldn't listen
25 to the evidence, base a decision strictly on the evidence in
26 the case; is that correct?

27 A. That's correct.

28 Q. Now the Judge has gone over this. I want to ask
29 you one more time on this. Do you have any beliefs against

Individual Voir Dire - JURY OUT

1 the death penalty?

2 A. No. No, sir.

3 Q. Okay. How would you say that your beliefs are as
4 far as the death penalty? Do you believe in the death
5 penalty?

6 A. Well, like you say, depending on the circumstances.

7 Q. Okay. And if you were picked on this particular
8 case?

9 A. Uh-hum.

10 Q. If the Judge instructed you that the law --

11 **BY MR. CARTER:** --Just for the record, Your
12 Honor, I object. I think that question has been asked
13 and answered.

14 **BY MR. EVANS:** I haven't asked it.

15 **BY THE COURT:** Well, no, but I have. And the
16 rules say we don't ask them a couple of times. He has
17 already answered the question.

18 **BY MR. EVANS:** Your Honor, this is the original
19 voir dire. We are not going to even be able to ask
20 about it?

21 **BY THE COURT:** About what, about the death
22 penalty?

23 **BY MR. EVANS:** Yes, sir.

24 **BY THE COURT:** Well, he has already been asked
25 about it, and you have just asked him about it. I
26 don't understand what else you want to ask him.

27 **BY MR. EVANS:** All right, sir.

28 **BY MR. EVANS:**

29 Q. I noticed that you did not fill out the last page

Individual Voir Dire - JURY OUT

1 of your questionnaire. Why did you not fill it out?

2 A. I was unaware of it because I had my wife helping
3 me with it, and maybe, maybe she just overlooked it.

4 Q. All right. What is your wife's name because that
5 is not on here?

6 A. Verlean.

7 Q. Verlean?

8 A. Uh-hum.

9 Q. How long have y'all been married?

10 A. Twenty-six, twenty-seven years.

11 Q. Do y'all have any children?

12 A. Two.

13 Q. What are their ages and names?

14 A. Terrian Robinson.

15 Q. Does one of them go by Trae?

16 A. Yes, sir.

17 Q. Mr. Robinson, hasn't your son Trae been convicted
18 of drug charges?

19 A. Not to my knowledge.

20 Q. Do you know where he is now?

21 A. Yes, sir. He is at home.

22 Q. Is he not on probation at this time?

23 A. No, sir. He is not.

24 Q. All right, there may be another Trae Robinson; I'm
25 not sure. What is his date of birth?

26 A. Uh, I would say he is around 27 or 28. I'm not
27 real sure of his birthday.

28 Q. Okay.

29 A. My second son is Cedric. Cedric Robinson.

Individual Voir Dire - JURY OUT

1 Q. All right.

2 A. He is like 23.

3 Q. Mr. Robinson, what is -- and none of this is to
4 embarrass anybody. It is just questions that are on here
5 that I'm trying to find out what your answers would be. How
6 far did you go in school?

7 A. Eleventh. Eleventh grade at Kilmichael.

8 Q. And that was in Kilmichael?

9 A. Yes, sir.

10 Q. On the questionnaire it was asked if you had ever
11 served on a jury. Do you know if that case that you sat on
12 was a criminal case or not?

13 A. No, sir.

14 Q. It wasn't?

15 A. It was like -- what would the other one be?

16 Q. Civil?

17 A. Like a civil.

18 Q. Over money?

19 A. Right.

20 Q. Instead of where somebody committed a crime or not?

21 A. Right. That's right.

22 Q. And you have been at True Value since '96?

23 A. Uh-huh, that's correct.

24 Q. Where did you work before that?

25 A. Tenn Tom Waterway, Tombigbee.

26 BY MR. EVANS: Your Honor, that's all I have.

27 BY MR. DE GRUY: No questions, Your Honor.

28 BY THE COURT: You may step down, Mr. Robinson.

29 (Juror 102A, Mr. Robinson, leaves the courtroom.)

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Any objection to him?

2 **BY MR. EVANS:** No, sir.

3 **BY MR. DE GRUY:** No, Your Honor.

4 **BY THE COURT:** He goes to the room. All right,
5 let's see Mr. Whitehead and see what the situation is.

6 **BY MR. CARTER:** What is his first name?

7 **BY THE COURT:** I have no idea.

8 **BY THE CLERK:** His name is Eugene, Eugene
9 Whitehead.

10 (The Court confers with the Clerk out of the
11 hearing of the Court Reporter.)

12 **BY THE COURT:** Has he been qualified?

13 **BY THE CLERK:** Uh-hum, this morning. He was
14 sworn in this morning.

15 **BY THE COURT:** Okay, his name is Eugene
16 Whitehead, and he is 8B.

17 (JUROR NO. 8B, MR. EUGENE WHITEHEAD, enters the
18 courtroom.)

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. When did you get here, Mr. Whitehead? I forget.

21 A. I got here about 15 after 8:00 this morning.

22 Q. This morning. You were not here yesterday?

23 A. Not here yesterday.

24 Q. Okay. Mr. Whitehead, have you ever heard anything
25 about this case?

26 A. I have.

27 Q. How did you hear it?

28 A. I know the family that has been here because they
29 stay in town here, rumors.

Individual Voir Dire - JURY OUT

1 Q. Which family, the Flowers family?

2 A. Right.

3 Q. Okay. Do you know Curtis Flowers?

4 A. Know him well.

5 Q. Okay. Would you consider yourself a friend of his?

6 A. Right.

7 Q. What about the rest of the family? You consider
8 them friends?

9 A. Goldman, yeah. Golden, but I don't know the rest
10 of them. I know Curtis and Robert Golden.

11 Q. Okay, you knew Mr. Golden who was a victim?

12 A. Right.

13 Q. You didn't know any of the other victims?

14 A. No.

15 Q. Did you know any of the families? Do you know
16 Mr. Golden's family?

17 A. Sure.

18 Q. Did you know any of the families of the other
19 victims?

20 A. No.

21 Q. How many of the family of Mr. Flowers do you know?
22 Most of them?

23 A. Most all of them.

24 Q. Okay. Have either of the families of Mr. Golden or
25 the family of Mr. Flowers ever discussed this with you or in
26 your presence?

27 A. No, sir.

28 Q. All right. Did you hear about this from news
29 coverage either in the newspaper or radio or television?

Individual Voir Dire - JURY OUT

1 A. Both news coverage, radio, television and just
2 rumor going around town.

3 Q. Okay. Did you hear about it through street talk or
4 gossip?

5 A. Both. Street talk, gossip, radio, television.

6 Q. Did you form an opinion based on what you heard or
7 read in the newspaper as to the guilt or innocence of
8 Mr. Flowers?

9 A. No.

10 Q. Would your relationship with his family affect you
11 to the point to where you could not be fair and impartial in
12 this case?

13 A. To be honest with you, I believe so.

14 Q. Thank you, Mr. Whitehead.

15 BY MR. EVANS: No questions, Your Honor.

16 BY MR. DE GRUY: No questions.

17 BY THE COURT: Thank you, sir.

18 (Juror 8B, Mr. Whitehead, leaves the courtroom.)

19 BY MR. EVANS: Cause.

20 BY THE COURT: I'm going to excuse him for cause.
21 Any objection from either side?

22 BY MR. EVANS: No, sir.

23 BY MR. DE GRUY: No, sir.

24 BY THE COURT: All right, that gets through with
25 all of them now. In my discussions with some of
26 y'all, I show 26. How many have y'all got? (Pause)
27 I think I'm one off, so I may have to go over, I want
28 to go over my list with y'all.

29 (Pause while everybody counts.)

Discussion - JURY OUT

1 **BY THE COURT:** Mr. de Gruy, how many have you
2 got?

3 **BY MR. DE GRUY:** I have 26.

4 **BY THE COURT:** How many, what have you got,
5 Linda?

6 **BY THE COURT REPORTER:** I have 25.

7 **BY THE COURT:** Okay, well, we are going to go
8 over it again.

9 **BY MR. EVANS:** Mine is so marked up it's hard to
10 tell.

11 **BY THE COURT:** Okay, let me call out who I have
12 got and see if this agrees with everybody. I have
13 number 15, Ms. Oliver; number 17, Ms. Fielder; number
14 24, Ms. Byars; number 25, Mr. Hamer; number 26,
15 Mr. Sawyer; number 34, Mr. Evaldi; number 35,
16 Ms. Braswell; number 40, Ms. Golden; number 41, Ms.
17 Bane; number 48, Mr. Hudson; number 50, Ms. Pearson;
18 number 52, Mr. Kendle; number 54, Ms. Curry; number
19 58, Ms. Reed; number 61, Ms. Holifield; number 72,
20 Ms. Collins; number 74, Ms. Pittman; number 76, Ms.
21 Austin; number 83, Ms. Oliver; number 85, Mr. Collins;
22 number 86, Mr. Barbour; number 88, Mr. Robinson;
23 number 90, Mr. Minniweather; number 92, Mr. Eskridge;
24 number 96, Ms. Cottingham. And 102A, Mr. Robinson.
25 Is that what you have got, Mr. de Gruy?

26 **BY MR. DE GRUY:** Yes, sir.

27 **BY THE COURT:** Is that what you have got, Ms.
28 Burchfield?

29 **BY THE COURT REPORTER:** Yes, sir.

Discussion - JURY OUT

1 **BY THE COURT:** Where did you miss it? You never
2 miss, so where did you miss?

3 **BY THE COURT REPORTER:** I don't know.

4 **BY THE COURT:** Okay.

5 **BY MR. EVANS:** That's what I have got.

6 **BY THE COURT:** Okay. Here is what we are going
7 to do. I'm going to call these jurors back in here,
8 and I'm going to excuse them until 1 o'clock tomorrow
9 afternoon. That may be a little early, but I don't
10 know where -- we also may get enough qualified by
11 lunch tomorrow to be able to go ahead, if we get to a
12 point, we could go ahead and have a panel and see if
13 we can't get a jury. We may not have to voir dire all
14 that panel to get the panel. And there again, we may
15 have to. But if we get to that point, I want those
16 jurors here, so then we can go ahead and get them
17 impaneled and sequestered and yada, yada, yada.

18 I also though -- we have 122 returns on the
19 second panel of jurors where we drew 200. We have got
20 122. I already know some of those probably are not
21 even going to be here. That could be enough depending
22 on how many we end up with, but I don't know that, and
23 I think it is going to be close when you consider what
24 we got out of about 108 or 109 here. So I propose to
25 enter an order. I'm going to enter it orally right
26 now directing the clerk at this time to draw another
27 100 names. We won't serve those until we see where we
28 are somewhere about lunch or something tomorrow
29 afternoon. Is there any objection to that procedure?

Discussion - JURY OUT

1 **BY MR. EVANS:** No, sir.

2 **BY MR. DE GRUY:** No, Your Honor.

3 **BY THE COURT:** Okay. We will do that before
4 y'all leave, and Mr. Flowers needs to be there when we
5 do that. Anything else we need to cover?

6 (No response from either side.)

7 **BY THE COURT:** Okay. Y'all need to give me some
8 space here. I'm going to bring the jury in in just a
9 minute. Then we will break for the day. You can
10 bring those in the room in.

11 JURORS ENTER THE COURTROOM.

12 **BY THE COURT:** Ladies and gentlemen, y'all have
13 made the cut so to speak, and you are on the panel
14 from which this jury will be selected eventually.
15 However, I do not yet have sufficient numbers for us
16 to be able to do that. I had initially summonsed 300
17 jurors for this purpose, but I had another 200
18 summonsed to be here in the morning in case this
19 situation developed.

20 So I am going to start this process with them at
21 8:30 in the morning. And at some point in time we
22 will reach a point where I have sufficient jurors for
23 us to select this jury. I'm not going to need you
24 here in the morning. I know we are not going to get
25 that done before lunch for sure.

26 I do need you back at 1 o'clock tomorrow
27 afternoon, and we will see what my status is then. I
28 anticipate possibly that by tomorrow afternoon late we
29 will be in a position to where we can pick this jury,

Court recessed on 2/3/04

1 and so you should also in that regard have some plans
2 as far as having clothes and things ready or available
3 so that if we do get the jury selection tomorrow, we
4 can, you can either have those with you, or we will
5 have them where I can send somebody to pick them up
6 for you if you get picked on this jury. I don't know
7 that we are going to get that far tomorrow, but we
8 have some possibility of being able to do that. Of
9 course, tonight you can go home.

10 I will give you the same instructions that I have
11 given you all along in this case. You must not
12 discuss this matter amongst yourselves nor with
13 anybody else including your family members at home.
14 You must not form any opinion about this case because
15 all of you now have told me that you did not have an
16 opinion that would affect you as being a fair and
17 impartial juror. You are not to form any now because
18 you have not heard any evidence. You are not to allow
19 anybody to contact you about this matter or talk about
20 it in your presence. There could be some news
21 coverage about this. If you run into that, you should
22 not watch it if it's on television, not listen to it
23 if it's on the radio, nor should you read any
24 newspaper coverage about it.

25 Do you each understand that? Okay, I will see
26 y'all in the morning at 1 o'clock. Now it's important
27 that you all come back at 1 o'clock. As you can see,
28 I have got to have every one of you in order to be
29 able to do this. And as I said yesterday, if you are

Court recessed on 2/3/04

1 not here when I need you, then I'm going to have to
2 send Sheriff Thornburg out to find you. I will see
3 you then.

4 JURY LEAVES THE COURTROOM AT 4:30 PM.

5 **BY THE COURT:** I'm going to get us another list
6 made that will eliminate the ones we just eliminated.
7 It will be those 26 on it, so we will have that list
8 to deal with. Then you will have a new list of
9 whoever is coming in the morning. I think she has
10 probably got one of those now. If y'all would like,
11 you can go in there and punch the button on the
12 computer and pull the 100. We are not going to do any
13 summons until later.

14 Let me ask you this. Do you want the Court
15 Reporter in there and let's make a record of how they
16 are pulled?

17 **BY MR. DE GRUY:** No, if you would like me to
18 waive the Court Reporter's presence right now, we
19 don't need the Court Reporter there for--

20 **BY THE COURT:** Okay, she is going to -- for the
21 record let me say it would be pulled in the same
22 manner that the original venire was pulled, which is a
23 random selection by computer. It's done by random
24 number according to statute, and that procedure is on
25 the record. She will utilize the same procedure
26 pulling these 100 as she used for those. Is that
27 satisfactory for the record?

28 **BY MR. DE GRUY:** Yes, Your Honor. And the record
29 can reflect that we are all going together including

Court recessed on 2/3/04

1 Mr. Flowers to watch the actual punching of the
2 button.

3 **BY THE COURT:** Punching of the numbers or
4 punching of the button. Okay.

5 (THE COURT, ALL COUNSEL, AND THE DEFENDANT WENT
6 INTO THE CIRCUIT CLERK'S OFFICE WITH THE CIRCUIT CLERK TO
7 PULL 100 ADDITIONAL JURORS. COURT WAS RECESSED FOR THE DAY
8 ON FEBRUARY 3, 2004.)

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2/4/04 Qualify more jurors

1 ON FEBRUARY 4, 2004, A NEW PANEL OF JURORS APPEARED
2 IN OPEN COURT. WITH COUNSEL PRESENT, ROLL CALL WAS CONDUCTED
3 AS FOLLOWS:

4 **BY THE CLERK:** Good morning. Some of you may not
5 know who I am. I am your Circuit Clerk, Julie
6 Halfacre, and I'm the one that sent you the letter
7 inviting you to be here today. And now we're going to
8 have roll call, and I want you to answer "Here" or
9 "Present" just like you did in grammar school. Speak
10 loud so the teacher can hear you, please. They might
11 mark you absent, and then the Sheriff will be out
12 looking for you. So if y'all will just say "Here" or
13 "Present" so we can hear you.

14 (Roll was called of the last 200 jurors out of the
15 original 500 summonsed.)

16 **BY THE CLERK:** Is there anybody here who is 65 or
17 over that would like to claim your age and not serve?
18 Now we would still love for you to serve if you want
19 to, but you don't have to. Would y'all come up here
20 please and give me your name.

21 **BY THE BAILIFF:** Ms. Julie, we have had some to
22 come in.

23 (Four people approach Ms. Halfacre. On the second
24 venire, first list, three people excused for age were juror
25 number 116, Thomas Walters; juror number 188, Neva Mason; and
26 juror number 199, Faye Bennett.)

27 **BY THE CLERK:** Is there anyone here who is under
28 21? Under 21 years of age? All right, I see you
29 grinning, Bobby Bell.

2/4/04 Qualify more jurors

1 **BY A JUROR:** I can't fool nobody.

2 **BY THE CLERK:** Okay, some people have come in
3 since we called the roll. I'm going to go over the
4 ones who were absent now. Mattie Hall, but I know she
5 is not here because she is 87, and she is not even
6 living at home. She is with a child somewhere, and I
7 don't know if it's in Montgomery County or out of
8 state. But I know for a fact she is not able to live
9 alone.

10 **BY MR. DE GRUY:** You don't want to send the
11 Sheriff to get her?

12 **BY THE CLERK:** Well, he can go down there and
13 look for her.

14 **BY MR. DE GRUY:** Okay.

15 **BY THE CLERK:** Might have to bring her on a
16 stretcher, but we can go look for her. Okay.

17 (The Clerk then called the roll of the rest of the
18 absent jurors.)

19 **BY THE CLERK:** Is there anybody here who has a
20 doctor's excuse? Anybody here with a doctor's excuse
21 today? (No response) Is there anybody here who
22 received a jury summons to be here today or to be here
23 this week and your name was not called? (One man
24 raises his hand.) Okay, would you come up here,
25 please.

26 (Mr. Ralph Orr was added to the list as juror
27 number 206A.)

28 **BY THE CLERK:** Anybody else here whose name was
29 not called? (No response) If all of you would please

2/4/04 Qualify more jurors

1 stand and raise your right hand, I'm going to give you
2 the first oath of the Court. This is your oath to
3 answer all the questions of the Court.

4 Do you and each of you solemnly swear or affirm
5 that you will answer the questions of the Court
6 touching on your qualifications as a juror to the best
7 of your ability, skill and understanding so help you
8 God?

9 (Jurors respond in the affirmative.)

10 **BY THE CLERK:** Thank you.

11 (COURT WAS THEN DULY OPENED ON FEBRUARY 4, 2004,
12 AND WITH ALL COUNSEL, THE DEFENDANT, AND A NEW JURY PANEL
13 PRESENT, THERE WAS THE FOLLOWING:)

14 **BY THE COURT:** Good morning. Y'all have -- and I
15 know you already know this by now, but you have been
16 called here to try one case that we have set for this
17 week and next week. It is, in fact, a capital case,
18 and we are trying to draw a jury. We had some jurors
19 in earlier this week, and we have gotten some on the
20 panel, but I do not have enough on the panel yet for
21 us to complete the jury selection process. So that's
22 the reason I brought you in, and the reason I brought
23 you in on Wednesday was because we just couldn't
24 accommodate all of you on Monday.

25 In just a second I'm going to go over some
26 qualifications that you must meet in order to serve on
27 a jury in this state. If these apply to you, you
28 should let me know. After I do that, then I'm going
29 to talk to you about some reasons I could excuse you

2/4/04 Qualify more jurors

1 from jury service, but you must understand a few
2 things before I get to that point. One, Circuit Court
3 is unlike Chancery Court. In Chancery Court the Judge
4 makes all the decisions. He determines the facts, and
5 he determines the law and ultimately just decides the
6 whole case. In Circuit Court, that is not the way it
7 works. In Circuit Court, I get to decide the law, and
8 I give that law to the jury in written instructions
9 which they are under a duty to follow. However, the
10 jury decides the facts, and they decide how to apply
11 that law to the facts as they see them and the facts
12 that come in from the witness stand. And the jury
13 ultimately decides the case.

14 So it is essential that I have jurors in order
15 for this process to function. I consider serving on a
16 jury to be, next to voting the most important duty
17 that a citizen has, and it is so -- it is important
18 for just the reasons that I told you, because the
19 court system will not work without participation of
20 all of us. And just like the District Attorney and
21 the defense lawyers and I have a duty that we must
22 perform in relation to this case; the citizens of this
23 community also have a duty that they must perform to
24 see that this system works. And that's why you are
25 here today.

26 I say all of that because I am going to be
27 limited as to what I can do as far as excusing you
28 from jury service. The Legislature has set out
29 specific statutes or laws that tell me what I can do.

2/4/04 Qualify more jurors

1 If you do not meet that criteria, then I'm not going
2 to be able to excuse you even though you may have a
3 very good excuse. If it does not meet the statutory
4 reasons that I can grant, then I'm just not going to
5 be able to do it.

6 This is a case too that is going to be, the jury
7 will be sequestered in this case. In other words, the
8 jury will stay together, will be put up in a hotel
9 until such time as we get through with this case. I
10 anticipate the case will go well into next week, but
11 we should be able to get through by next week, but you
12 will be here for that long.

13 In order to serve on a jury in the state, you
14 must be at least 21 years of age. You must be a
15 registered voter in this case in Montgomery County.
16 You must be able to read and write, and you cannot
17 have been convicted of a felony. You must not have
18 been convicted of the unlawful sale of intoxicating
19 liquors within the last five years. You cannot be a
20 common gambler nor habitual drunkard. You must not
21 have served on a jury in this county within the last
22 two years, and you must not have a case pending in
23 this Court. Now the only case that would be pending
24 in this court that would affect you at this time is
25 this case, and this is the case of the State of
26 Mississippi versus Curtis Giovanni Flowers. Do any of
27 you not meet those qualifications?

28 Yes, sir. If you would stand up, please, sir.

29 **BY A JUROR:** Can I approach?

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 571-720

VOLUME 12 of 21

EXHIBIT

ELECTRONIC DISK

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

2/4/04 Qualify more jurors

1 BY THE COURT: Yes, sir. You can.

2 (Juror approaches the bench.)

3 BY A JUROR: Yes, sir. I have been accused of a
4 crime, convicted of a crime before.

5 BY THE COURT: You have? What kind of crime was
6 it?

7 BY A JUROR: Grand larceny.

8 BY THE COURT: Okay, and what is your name, sir?

9 BY A JUROR: Billy Dees.

10 BY THE COURT: Billy Dees. All right, Mr. Dees,
11 you are excused.

12 (Juror 165, Billy Dees, was excused. Several
13 people have approached the bench.)

14 BY THE COURT: Everybody stay out there and let
15 the bailiff bring you forward.

16 BY THE BAILIFF: One at a time.

17 BY THE COURT: Okay, whichever one. Well, yeah.
18 It's not necessary -- I don't mind talking to y'all up
19 here at the bench, but it's not necessary that you
20 come up here. I can talk to you from out there, but I
21 will do whatever you want to do. What is your name,
22 sir?

23 BY A JUROR: Julius Forrest, Jr.

24 BY THE COURT: All right, and what qualification
25 do you not meet?

26 BY A JUROR: I just served a year in prison.
27 Plus I'm a relative.

28 BY THE COURT: Okay, you have been convicted of a
29 felony?

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2/4/04 Qualify more jurors

1 BY A JUROR: Right.

2 BY THE COURT: What is your name again?

3 BY A JUROR: Julius Forrest.

4 BY THE COURT: Julius Forrest. All right, Mr.
5 Forrest.

6 (Juror 191, Julius Forrest, Jr. was excused.)

7 BY THE COURT: All right, yes, sir.

8 BY A JUROR: Danny Cordell.

9 BY THE COURT: All right, sir, and what--

10 BY A JUROR: I'm on house arrest.

11 BY THE COURT: Okay, so you have been convicted
12 of a felony; is that right?

13 BY A JUROR: Yes.

14 BY THE COURT: Did y'all get his name?

15 BY MR. EVANS: No, sir.

16 BY THE COURT: What is your name again?

17 BY A JUROR: Daniel Cordell.

18 BY THE COURT: Danny Cordell, okay, you are
19 excused.

20 (Juror 167, Daniel James Cordell, was excused.)

21 BY THE COURT: Mr. Forrest, you are excused. You
22 can go.

23 BY A JUROR: (Unidentified white woman) I served
24 on one three years ago, I think, two or three years
25 ago.

26 BY THE COURT: Okay, it would be in the last two
27 years.

28 BY A JUROR: Oh, thank you.

29 (Black woman approaches the bench along with Mr.

2/4/04 Qualify more jurors

Nash.)

BY UNIDENTIFIED WOMAN: How are you doing? Okay, this is Quintrix Nash, and he is my grandson.

BY THE COURT: What is his name?

BY UNIDENTIFIED WOMAN: Quintrix Nash.

BY THE COURT: Quintrix Nash?

BY UNIDENTIFIED WOMAN: Yes, and he is really not able to serve. He is, you know.

BY THE COURT: Disabled?

BY UNIDENTIFIED WOMAN: Yeah. He disabled.

BY THE COURT: Is he on like social security, SSI and that kind of stuff?

BY UNIDENTIFIED WOMAN: Yeah, he draw disability.

BY THE COURT: Draws disability?

BY UNIDENTIFIED WOMAN: Yes, they put him on there. So he went through school on special ed because he didn't understand everything.

BY THE COURT: Okay, I'm going to excuse Mr. Nash.

BY UNIDENTIFIED WOMAN: I will tell him. Thank you.

BY THE CLERK: Number 198.

BY THE COURT: I assume that was his mother; is that right? Let the record reflect that was his mother.

(Juror 198, Quintrix D. Nash, was excused.)

BY THE COURT: All right.

BY UNIDENTIFIED MAN: This is my brother. He is not mentally able to serve on the jury duty.

2/4/04 Qualify more jurors

1 **BY THE COURT:** All right, is he on SSI,
2 disability?

3 **BY UNIDENTIFIED MAN:** Yes.

4 **BY THE COURT:** All right, what is his name?

5 **BY UNIDENTIFIED MAN:** Roshun Alexander.

6 **BY THE COURT:** I'm sorry; I couldn't hear.

7 **BY UNIDENTIFIED MAN:** Roshun Alexander.

8 **BY THE COURT:** Okay, I'm going to excuse him.

9 (Juror 173, Roshun Alexander, was excused.)

10 **BY THE COURT:** Yes, sir.

11 **BY A JUROR:** Leland Stewart. I have a past
12 record, felony record.

13 **BY THE COURT:** All right, Mr. Stewart, you are
14 excused.

15 (Juror 139, Leland Scott Stewart, was excused.)

16 **BY A JUROR:** Henry Campbell. I served the last
17 couple of years.

18 **BY THE COURT:** Served when?

19 **BY A JUROR:** I was, the year before last.

20 **BY THE COURT:** Okay. Your name is Henry
21 Campbell?

22 **BY A JUROR:** Right.

23 **BY THE COURT:** Okay, Mr. Campbell, you are
24 excused.

25 (Juror 168, Henry Lee Campbell, was excused.)

26 **BY A JUROR:** Terry Seals.

27 **BY THE COURT:** Okay. Terry Seals?

28 **BY A JUROR:** Yes, sir.

29 **BY THE COURT:** All right, what is your reason?

2/4/04 Qualify more jurors

1 BY A JUROR: I have got a felony.

2 BY THE COURT: Okay. You are excused, Mr. Seals.

3 (Juror 192, Terry A. Seals, was excused.)

4 BY A JUROR: Troy Fullilove. Burglary.

5 BY THE COURT: And what is your name again?

6 BY A JUROR: Troy Fullilove.

7 BY THE COURT: Troy Fullilove?

8 BY A JUROR: Right.

9 BY THE COURT: All right, you are excused.

10 (Juror 195, Troy Lee Fullilove, was excused.)

11 BY THE COURT: Anybody else?

12 BY A JUROR: William Burt.

13 BY THE COURT: All right, sir, and what is your
14 excuse?

15 BY A JUROR: A felony.

16 BY THE COURT: William?

17 BY A JUROR: Burt.

18 BY THE COURT: Burt, B U R T?

19 BY A JUROR: Yes.

20 BY THE COURT: Okay, you are excused, Mr. Burt.

21 (Juror 134, William Andre Burt, was excused.)

22 BY THE COURT: Yes, ma'am.

23 BY A JUROR: Margaret Eskridge.

24 BY THE COURT: Okay.

25 BY A JUROR: I have a grand baby home got asthma,
26 and I can't read and write.

27 BY THE COURT: You cannot read and write?

28 BY A JUROR: No, sir.

29 BY THE COURT: What is your name, ma'am?

2/4/04 Qualify more jurors

1 BY A JUROR: Margaret Eskridge.

2 BY THE COURT: Okay, did y'all get that?

3 Eskridge?

4 BY A JUROR: Yes.

5 BY THE COURT: Margaret? What is it?

6 BY THE CLERK: Margaret Eskridge.

7 BY THE COURT: All right, Ms. Eskridge, you are
8 excused.

9 (Juror 174, Margaret A. Eskridge, was excused. The
10 Court confers with the Clerk off the record.)

11 BY THE COURT: Yes, ma'am.

12 BY A JUROR: I'm 60 and everything, and I can't
13 read and write.

14 BY THE COURT: You cannot read and write?

15 BY A JUROR: I had a stroke.

16 BY THE COURT: All right, what is your name,
17 ma'am?

18 BY A JUROR: Emma Lee Eskridge.

19 BY THE COURT: Emma Lee Eskridge. Okay, you are
20 excused.

21 (Juror 147, Emma Lee Eskridge, was excused.)

22 BY A JUROR: Elizabeth Elliott. I have a
23 doctor's appointment. I have to go to the doctor
24 every week.

25 BY THE COURT: Okay, I will get to that in a
26 minute. Yes, ma'am?

27 BY A JUROR: Cynthia Stewart. I have a felony.

28 BY THE COURT: I'm sorry?

29 BY A JUROR: Cynthia Stewart.

2/4/04 Qualify more jurors

1 BY THE COURT: Okay.

2 BY A JUROR: I have committed a felony crime.

3 BY THE COURT: You are a felon?

4 BY A JUROR: Yes.

5 BY THE COURT: Okay. You are excused, Ms.

6 Stewart.

7 (Juror 103, Cynthia Stewart, was excused.)

8 BY THE COURT: Yes, sir.

9 BY A JUROR: I have got an out of state
10 conviction too.

11 BY THE COURT: All right, your name, sir?

12 BY A JUROR: Abdul Karriem.

13 BY THE COURT: Abdul Karriem?

14 BY A JUROR: Yes.

15 BY THE COURT: All right, you are excused.

16 (Juror 129, Abdul Jaami Karriem, was excused.)

17 BY THE COURT: Yes, ma'am.

18 BY A JUROR: Eddie Allen. I have a medical
19 problem. I have asthma real bad.

20 BY THE COURT: Okay, I'm going to get to that in
21 a minute. Okay. If you have, if you have a medical
22 problem, I can talk to you about that. If you will
23 come up here, ma'am; I will talk to you about it, and
24 that other lady back there.

25 BY A JUROR: I have medical problems too.

26 BY THE BAILIFF: One at a time.

27 (Black lady approaches the bench.)

28 BY THE COURT: Yes, ma'am. And your name?

29 BY A JUROR: Eddie Mae Allen.

2/4/04 Qualify more jurors

1 **BY THE COURT:** Okay. What kind of problem have
2 you got?

3 **BY A JUROR:** Asthma.

4 **BY THE COURT:** You have asthma?

5 **BY A JUROR:** Yes, sir. I'm on a --

6 **BY THE COURT:** --(To the audience) Y'all have to
7 be quiet now.

8 **BY A JUROR:** I'm on a nebulizer four times a day.

9 **BY THE COURT:** Well, if you are on the nebulizer,
10 are you okay?

11 **BY A JUROR:** Sometimes.

12 **BY THE COURT:** Okay. I don't think that will
13 disable you from serving on the jury, ma'am. If you
14 have a problem, we can take a break or something like
15 that, but I can't excuse you for that. You need to
16 have a seat.

17 **BY A JUROR:** I can't stand to be closed in.

18 **BY THE COURT:** Well, we are not going to close
19 you in much. You will just be in a room.

20 (Another black woman approaches the bench.)

21 **BY THE COURT:** What is your name, ma'am?

22 **BY A JUROR:** Elizabeth Elliott. I have a low
23 blood count, and I have to go take a shot every week,
24 and I have, I'm a diabetic too.

25 **BY THE COURT:** Okay, well, of course, diabetics,
26 being a diabetic is not enough excuse to get you off
27 medically. What is this about taking a shot?

28 **BY A JUROR:** I have a low blood count, and I have
29 to go take the shot every week.

2/4/04 Qualify more jurors

1 BY THE COURT: Where do you get--

2 BY A JUROR: Grenada.

3 BY THE COURT: Huh?

4 BY A JUROR: Grenada.

5 BY THE COURT: Grenada. Have you had the shot
6 this week?

7 BY A JUROR: No, I supposed to be going today.

8 BY THE COURT: Okay. And your name again?

9 BY A JUROR: Elizabeth Elliott.

10 BY THE COURT: Ms. Edge?

11 BY A JUROR: Elliott.

12 BY THE COURT: Elliott. Okay, I'm going to
13 excuse you, Ms. Elliott.

14 (Juror 138, Elizabeth A. Elliott, was excused. A
15 black man approaches the bench.)

16 BY THE COURT: How are you doing, sir?

17 BY A JUROR: James Buckhalter.

18 BY THE COURT: James who?

19 BY A JUROR: Buckhalter.

20 BY THE COURT: Buckhalter, okay.

21 BY A JUROR: I have high blood pressure real bad.

22 BY THE COURT: High blood pressure? I have got
23 it too. (Laughter) And some days it's worse than
24 others.

25 BY A JUROR: I been knowing him a long time.

26 BY THE COURT: Well, we will come to that part of
27 it. I can't excuse you for high blood pressure.

28 (A white woman approaches the bench.)

29 BY A JUROR: Rhonda Boyle.

2/4/04 Qualify more jurors

1 **BY THE COURT:** Wanda Boyle?

2 **BY A JUROR:** Rhonda Boyle.

3 **BY THE COURT:** Rhonda, uh-huh.

4 **BY A JUROR:** My husband is at home with bad
5 health, and I have to dress him every morning.

6 **BY THE COURT:** You are the only one can take care
7 of him?

8 **BY A JUROR:** And we are supposed to go next week
9 for an orthopedic surgeon for a possible hip
10 replacement surgery.

11 **BY THE COURT:** Okay, Ms. Boyle, I'm going to
12 excuse you.

13 (Juror 207, Rhonda Morrow Boyle, was excused.)

14 **BY THE COURT:** Why don't you stand up here, Ray.
15 Then you can hear better.

16 **BY A JUROR:** Jerry Crowder.

17 **BY THE COURT:** Jerry Crowder?

18 **BY A JUROR:** Uh-huh. I take a high blood
19 pressure pill that makes me have to go the bathroom,
20 you know, regularly, you know, for a fluid pill.

21 **BY THE COURT:** I understand that, and we are
22 going to take enough breaks to where that won't be a
23 problem. If it's like the commercial, if you have got
24 to go, you have got to go; just holler. We will let
25 you go.

26 (A white man approaches the bench.)

27 **BY A JUROR:** If you've look, you have seen me a
28 bunch of times. Ralph Orr. I have had lower back
29 surgery, surgery twice on my neck. I am a diabetic.

2/4/04 Qualify more jurors

1 I have to check my blood sugar three times a day, and
2 I cannot sit very long at a time.

3 BY THE COURT: Because of your back?

4 BY A JUROR: Yes, sir. I am hurting right now.

5 BY THE COURT: All right. Have you got his name?

6 BY THE CLERK: What is it?

7 BY A JUROR: Ralph Orr.

8 BY THE COURT: Okay, you are excused.

9 BY A JUROR: Thank you, sir.

10 (Juror 206A, Ralph Orr, was excused.)

11 BY MR. DE GRUY: Was he excused?

12 BY THE COURT: Yes. Back.

13 (A white man approaches the bench.)

14 BY A JUROR: I'm a diabetic. Plus I have trouble
15 staying awake. That is the main problem. If I get
16 still, I can't stay awake.

17 BY THE COURT: Is it to the point that you could
18 not pay attention in this case?

19 BY A JUROR: Well, if it was real interesting, I
20 probably could but--

21 BY THE COURT: -- Well, it'll probably be that.

22 BY A JUROR: --I would probably go to sleep.

23 BY THE COURT: Well, I probably would too.

24 BY A JUROR: I have got a lot of trouble with
25 that.

26 BY THE COURT: I can't excuse you for that
27 though.

28 BY A JUROR: Okay.

29 BY THE COURT: Thank you.

2/4/04 Qualify more jurors

1 (A white woman approaches the bench.)

2 **BY A JUROR:** My name is Charlene Palmertree. My
3 mother is a cancer patient, and she is in Jackson
4 right now. And my sister is staying with her, and I
5 am tending to all the kids. I have got my sister's
6 kids. She has got three, and then I have one. It's
7 just me and my sister.

8 **BY THE COURT:** Okay, Ms. Palmertree, I'm going to
9 excuse you.

10 (Juror 161, Charlene Ann Palmertree, was excused.

11 A white man approaches the bench.)

12 **BY THE COURT:** Yes, sir. How are you doing, sir?

13 **BY A JUROR:** Morning. I am Bobby Cooper. I had
14 a heart catheterization about a month ago. I have got
15 41 percent blockage in one artery and 39 in the other.
16 I am a diabetic also. I think this would be too much
17 stress on me.

18 **BY THE COURT:** Stress on you, okay. Cooper? Is
19 that right?

20 **BY A JUROR:** Yes, sir.

21 **BY THE COURT:** All right, Mr. Cooper, I'm going
22 to excuse you.

23 **BY A JUROR:** Thank you.

24 (Juror 169, Bobby Earl Cooper, was excused. A
25 black man approaches the bench.)

26 **BY THE COURT:** Yes, sir.

27 **BY A JUROR:** Willie Townsend. Sir, my wife is
28 pregnant. We are expecting any day now. And plus her
29 father is being transferred to Jackson to the

2/4/04 Qualify more jurors

1 hospital. He has got cancer.

2 BY THE COURT: Okay, Mr. Townsend, I'm going to
3 excuse you. Good luck on the baby.

4 BY THE CLERK: What was his first name?

5 BY A JUROR: Willie.

6 BY MR. EVANS: Is that John?

7 BY THE COURT: Mr. Townsend, what is your full
8 name?

9 BY A JUROR: Willie Earl Townsend, Jr.

10 BY THE COURT: Okay. Thank you.

11 (Juror 162, Willie Earl Townsend, Jr., was excused.
12 A white man approaches the bench.)

13 BY A JUROR: I have an 81 year old mother at
14 home, and I'm her primary caretaker.

15 BY THE COURT: Okay, nobody to do that but you?

16 BY A JUROR: That's it.

17 BY THE COURT: And what is your name?

18 BY A JUROR: Benny Locke.

19 BY THE COURT: Benny Locke?

20 BY A JUROR: Locke, yes, sir.

21 BY THE COURT: Okay, Mr. Locke, you are excused.

22 BY A JUROR: Thank you, sir.

23 (Juror 125, Benny Locke, was excused.)

24 BY THE COURT: Okay, if you own your own business
25 and by being here, that business will shut down, and
26 there is nobody else to run it, then I can excuse you
27 for that.

28 Yes, sir. Back here in the back. Y'all don't
29 have to come up here for this. Y'all just sit down.

2/4/04 Qualify more jurors

1 You can tell me from the audience.

2 BY THE BAILIFF: Sit down everybody, and stand up
3 one at a time.

4 BY THE COURT: Let's just start over here. Yes,
5 sir.

6 BY A JUROR: David Heath. Heath Aviation, it's a
7 federally regulated business, and I have to be there
8 for it to operate.

9 BY THE COURT: All right, sir. You are excused?
10 Did you get his name?

11 BY THE CLERK: David Heath.

12 (Juror 110, David Heath, was excused.)

13 BY THE COURT: All right.

14 BY A JUROR: Herbert Summers. Pristeen Springs.

15 BY THE COURT: I'm sorry, sir. Yes, sir. What
16 is your --

17 BY A JUROR: Pristeen Springs, a bottled water
18 company.

19 BY THE COURT: And what springs is it?

20 BY A JUROR: Pristeen Springs.

21 BY THE COURT: Are you the only one runs it?

22 BY A JUROR: Yes, sir.

23 BY THE COURT: Okay, you are excused.

24 (Juror 119, Herbert Jeffrey Summers, was excused.)

25 BY THE COURT: Yes, sir.

26 BY A JUROR: Phillip Patridge. I see after four
27 water associations. I don't have another certified
28 operator to take my place while I'm gone.

29 BY THE COURT: All right, sir. You are excused.

2/4/04 Qualify more jurors

1 Wait, you have got to give your name.

2 BY A JUROR: Phillip Patridge.

3 (Juror 211, Philip Jeffery Patridge, was excused.)

4 BY THE COURT: Yes, sir.

5 BY A JUROR: Phillip Evans. I run a barber shop.
6 I'm the only barber there.

7 BY THE COURT: Okay, Mr. Evans, you are excused.

8 (Juror 152, Phillip Evans, was excused.)

9 BY A JUROR: Bob Barnes. We have three
10 businesses that I am in charge of running, and there
11 are certain things that have to be done on a daily
12 basis, and there is nobody else is trained to do while
13 I'm gone. We have got a brand new business we just
14 bought, and we are trying to get it turned around.

15 BY THE COURT: What is your name?

16 BY A JUROR: Bob Barnes.

17 BY THE COURT: All right, Mr. Barnes, you are
18 excused.

19 (Juror 218, Robert Allen Barnes, was excused.)

20 BY THE COURT: Yes, sir. Right there, yes, sir.

21 BY A JUROR: Charles Whitfield. I am a
22 commission sales agent. I don't--

23 BY THE COURT: --Okay, you are excused.

24 BY A JUROR: Thank you.

25 (Juror 184, Charles Marvin Whitfield, was excused.)

26 BY THE COURT: Yes, sir.

27 BY A JUROR: I have got a log truck.

28 BY THE COURT: All right, that -- your name, sir?

29 BY A JUROR: David Tidwell. David Tidwell.

2/4/04 Qualify more jurors

1 BY THE COURT: David Tidwell?

2 BY A JUROR: Yes, sir.

3 BY THE COURT: All right, you are excused. Yes,
4 sir.

5 (Juror 113, David D. Tidwell, was excused.)

6 BY A JUROR: Vaughn Manufacturing; David Vaughn.
7 I have got a manufacturing operation. I'm the only
8 one to run it.

9 BY THE COURT: What kind of manufacturing is it?

10 BY A JUROR: We manufacture sheet metal. I have
11 got five employees, and I have to be there to keep
12 them --

13 BY THE COURT: -- What happens if you get sick?

14 BY A JUROR: They go home.

15 BY THE COURT: Okay. Your name, sir?

16 BY A JUROR: David Vaughn.

17 BY THE COURT: You are excused, Mr. Vaughn.

18 (Juror 216, David Lindsey Vaughn, was excused.)

19 BY THE COURT: Yes, sir.

20 BY A JUROR: Mike Tompkins. I have an antique
21 shop and a mini storage, and I'm the only one that
22 runs it.

23 BY THE COURT: All right, sir. You are excused.

24 BY MR. CARTER: What was the name?

25 (Juror 212, Michael B. Tompkins, was excused.)

26 BY A JUROR: Billy Gene Costilow. I am an
27 electrician, and I'm the sole employee.

28 BY THE COURT: I can't hear you, sir.

29 BY A JUROR: I'm Billy Gene Costilow. I'm an

2/4/04 Qualify more jurors

1 electrician, and I'm the only employee.

2 BY THE COURT: All right, Mr. Costilow, you are
3 excused. Yes, sir.

4 (Juror 144, Billy Gene Costilow, was excused.)

5 BY A JUROR: Roy Mitchell. I have a restaurant
6 that I have to be there.

7 BY THE COURT: There is nobody to run that but
8 you?

9 BY A JUROR: No, sir.

10 BY THE COURT: What happens if you are sick?

11 BY A JUROR: I don't get sick.

12 BY THE COURT: Well, all right, sir. What is
13 your name again?

14 BY A JUROR: Mitchell, Roy Mitchell.

15 BY THE COURT: You are excused.

16 (Juror 128, Roy Wayne Mitchell, was excused.)

17 BY A JUROR: Gloria Neely. I am a day care
18 assistant, and I have infants and I'm a caregiver in
19 infant care, and I'm the only caregiver there.

20 BY THE COURT: You run a day care?

21 BY A JUROR: I'm assistant. I have the infant
22 care. I'm the only--

23 BY THE COURT: --Oh, you are the babies?

24 BY A JUROR: Uh-huh.

25 BY THE COURT: You have got the babies, all
26 right. And nobody else to do that?

27 BY A JUROR: Uh-uh.

28 BY THE COURT: What is your name, ma'am?

29 BY A JUROR: Gloria Neely.

2/4/04 Qualify more jurors

1 BY THE COURT: We couldn't hear you.

2 BY A JUROR: Gloria Neely.

3 BY THE COURT: Gloria Neely, okay. You are
4 excused.

5 (Juror 200, Gloria Dean Neely, was excused.)

6 BY THE COURT: Yes, sir.

7 (A man approaches the bench.)

8 BY A JUROR: I've got laryngitis.

9 BY THE COURT: Okay.

10 BY A JUROR: I have my own business, and I have
11 to do the sales tax, the payroll, and about 15
12 (inaudible), and all my employees' information and all
13 that.

14 BY THE COURT: I know. You have been here
15 before. I'm going to excuse you. Mr. Larry Greenlee.

16 (Juror 150, Larry Joe Greenlee, was excused.)

17 BY A JUROR: Sir, I work, I drive a truck, and we
18 have got guys gone to Iraq. We just had a guy
19 transfer. Today with me being here, my truck is
20 parked, unable to run.

21 BY THE COURT: All right, sir. And your name?

22 BY A JUROR: Jason Burney, Terry Jason Burney.

23 BY THE COURT: Okay, you are excused.

24 BY A JUROR: Thank you.

25 (Juror 141, Terry Jason Burney, was excused.)

26 BY THE COURT: Yes, ma'am.

27 BY A JUROR: I work for this older couple, and
28 I'm the only cook in the restaurant.

29 BY THE COURT: Okay, your name?

2/4/04 Qualify more jurors

1 BY A JUROR: Adrenia Howard.

2 BY THE COURT: Which restaurant you work for?

3 BY A JUROR: Herbert's Grocery and Deli in
4 Elliott.

5 BY THE COURT: Okay. You are excused.

6 BY A JUROR: Thank you.

7 (Juror 115, Adrenia Denice Howard, was excused.)

8 BY THE COURT: Okay, anybody else want to talk to
9 me?

10 BY A JUROR: I do.

11 BY THE COURT: All right.

12 BY A JUROR: My daughter works at Heatcraft at
13 night, and I have to keep my grand baby, and there is
14 no one there. She works from 11:00 to 7:00, and she
15 is nine years old, and I don't have anybody to stay
16 there with her.

17 BY THE COURT: Okay, and your name?

18 BY A JUROR: Lucille Powell.

19 BY THE COURT: You are excused.

20 BY A JUROR: Thank you.

21 (Juror 164, Lucille J. Powell, was excused.)

22 BY THE COURT: Yes, sir.

23 BY A JUROR: Judge Morgan, I am Billy Ferguson.
24 I have got a three year old son. My wife is in
25 Colorado until the 14th. I am in charge of his care;
26 no one else to do that.

27 BY THE COURT: All right, Mr. Ferguson, you are
28 excused.

29 BY A JUROR: Thank you.

2/4/04 Qualify more jurors

1 (Juror 196, William N. Ferguson, was excused.)

2 BY THE COURT: Yes, sir.

3 BY A JUROR: My names¹ is Eddie Caffey. I work at
4 Heatcraft from 3:00 to 11:00. I have to get somebody
5 to keep my mother. She is 86 years old, and she is on
6 a walker.

7 BY THE COURT: And you are the only one can do
8 that, keep her?

9 BY A JUROR: I be there in the daytime, yes, sir.
10 I have got another lady to stay there until I get off
11 work at night.

12 BY THE COURT: Okay, and you are the only one
13 there at night?

14 BY A JUROR: Yes.

15 BY THE COURT: All right, what is your name?

16 BY A JUROR: Eddie Lewis Caffey.

17 BY THE COURT: I couldn't hear him.

18 BY THE CLERK: Eddie Lewis Caffey.

19 BY THE COURT: Okay, you are excused.

20 (Juror 112, Eddie Lewis Caffey, was excused.)

21 BY THE COURT: Yes, sir.

22 BY A JUROR: Greg McCaskill. I work at Heatcraft
23 from 3:00 to 11:00, and I have two small kids. When I
24 get off, I have to keep them until they get ready to
25 go to school in the morning.

26 BY THE COURT: Okay, there is nobody to do that
27 but you?

28 BY A JUROR: No.

29 BY THE COURT: And what is your name?

2/4/04 Qualify more jurors

1 BY A JUROR: Greg McCaskill.

2 BY THE COURT: Okay, Mr. McCaskill, you are
3 excused.

4 (Juror 214, Gregory S. McCaskill, was excused.)

5 BY A JUROR: I have a two month old.

6 BY THE COURT: Okay.

7 BY A JUROR: Joy Campbell. Joy Campbell. I
8 don't have anybody to--

9 BY THE COURT: -- Did you get her name?

10 BY THE CLERK: Joy Campbell.

11 BY THE COURT: Okay, Ms. Campbell, you are
12 excused.

13 BY A JUROR: Thank you.

14 (Juror 189, Joy Latrisse Campbell, was excused.)

15 BY THE COURT: Yes, ma'am.

16 BY A JUROR: Stacey Lott. My husband is out of
17 town this week. He is supposed to go out of town next
18 week, and I have two kids.

19 BY THE COURT: Okay, nobody to keep them but you?

20 BY A JUROR: No.

21 BY THE COURT: And your name, ma'am? I'm sorry.

22 BY A JUROR: Stacey Lott.

23 BY THE COURT: Okay, Ms. Lott, you are excused.

24 (Juror 135, Stacey Pearson Lott, was excused.)

25 BY THE COURT: Yes, sir.

26 BY A JUROR: Yeah. My name is Claude Guess, and
27 I'm a college student at Mississippi State University.

28 BY THE COURT: Full time?

29 BY A JUROR: Yes.

2/4/04 Qualify more jurors

1 BY THE COURT: All right. Did you get his name?

2 BY THE CLERK: Claude.

3 BY THE COURT: What is your last name?

4 BY A JUROR: Guess.

5 BY THE COURT: Guess. You are excused.

6 (Juror 187, Claude Alexander Guess, was excused.)

7 BY THE COURT: Yes, sir.

8 BY A JUROR: My name is Malcolm Cooper. I attend
9 Holmes Junior in Grenada full time.

10 BY THE COURT: Okay, Mr. Cooper, you are excused.

11 (Juror 176, Malcolm Lee Cooper, was excused.)

12 BY A JUROR: I'm Tabor Mullen. I am also a full
13 time student at Mississippi State University.

14 BY THE COURT: All right, sir. You are excused.

15 (Juror 148, Tabor Lancaster Mullen, was excused.)

16 BY A JUROR: Yes. I am Vanessa Tillman. I have
17 three kids, and my mother is home with them sick.

18 BY THE COURT: There is nobody to take them--

19 BY A JUROR: But she is an elderly lady but--

20 BY THE COURT: I'm sorry?

21 BY A JUROR: She is 75, and she is not really
22 able to take care of the kids.

23 BY THE COURT: Okay, your name?

24 BY A JUROR: Vanessa Tillman.

25 BY THE COURT: All right, Ms. Tillman, you are
26 excused.

27 (Juror 213, Vanessa Tillman, was excused.)

28 BY THE COURT: Yes, ma'am.

29 BY A JUROR: My name is Sharon Green, and I am

2/4/04 Qualify more jurors

1 also a full time college student.

2 **BY THE COURT:** Ms. Green, you are excused. Where
3 are you going to school just for the record?

4 **BY A JUROR:** At San Diego State University.

5 **BY THE COURT:** Oh, okay. This would be a little
6 inconvenient. How are you-- what are you doing, on
7 line?

8 **BY A JUROR:** Yes, sir. It is on line, but I have
9 to be there every night to post to discussion boards,
10 to interact with my class.

11 **BY THE COURT:** Okay.

12 (Juror 203, Sharon Foster Green, was excused.)

13 **BY THE COURT:** Yes, ma'am.

14 **BY A JUROR:** My name is Veronica Moore. I'm a
15 full time student at Holmes Community College,
16 Grenada.

17 **BY THE COURT:** Okay, and your name again?

18 **BY A JUROR:** Veronica Moore.

19 **BY THE COURT:** Veronica Moore. You are excused.

20 (Juror 208, Veronica Moore, was excused.)

21 **BY THE COURT:** Okay, if y'all will stand, there
22 is another oath for you to take.

23 **BY THE CLERK:** Please raise your right hand. You
24 and each of you do solemnly swear or affirm that you
25 will well and truly try all issues and execute all
26 writs of inquiry that may be submitted to you or left
27 for your decision by the Court and a true verdict give
28 according to the evidence so help you God?

29 (Jurors respond in the affirmative.)

Voir Dire by the Court

1 **BY THE COURT:** Ladies and gentlemen, there has,
2 we have to make a list of those of you who are left
3 here. And that will take a few minutes, probably 20
4 to 30 minutes. I will give you a break until then.
5 Just don't leave the courthouse. Then we will come
6 back, and we will start what is called the voir dire
7 examination which I will explain to you when we get
8 back.

9 (FOLLOWING A MORNING RECESS ON FEBRUARY 4, 2004,
10 TRIAL CONTINUED IN OPEN COURT WITH ALL COUNSEL AND THE
11 DEFENDANT PRESENT. COUNSEL APPROACH THE BENCH.)

12 **BY THE COURT:** (To the Court Reporter) You don't
13 have to take this.

14 (Following the bench conference, the Court
15 approached the rail for voir dire:)

16 VOIR DIRE EXAMINATION BY THE COURT:

17 Ladies and gentlemen, this is what is called the
18 voir dire examination. That is just a term that means the
19 process that we use to try to find a fair and impartial jury
20 in this case. I find that especially during cases of this
21 nature, that it is better if I get down here with you at
22 least in the first part of this because we can communicate
23 better. I can hear you better, and y'all can understand me a
24 little bit better.

25 **BY THE COURT REPORTER:** Judge, they are not
26 numbered yet.

27 **BY THE COURT:** Okay.

28 **BY THE CLERK:** Could I have them seated in order.

29 **BY THE COURT:** Okay, I thought--

Voir Dire by the Court

1 **BY THE CLERK:** We have not done that.

2 **BY THE COURT:** Okay, y'all will have to move.

3 They are going to seat you over here and number you.

4 Then I will ask you some questions.

5 **BY THE CLERK:** That's right. Rosette Rogers.

6 (Roll was called by the Clerk according to the
7 second venire, second list, and the jurors were seated in
8 order and given numbered cards.)

9 VOIR DIRE BY THE COURT:

10 The purpose of this process that we are getting
11 ready to undertake is to find jurors that can be fair and
12 impartial for both sides. To that end, I'm going to ask you
13 some questions. When I get through, the lawyers will ask you
14 some questions. None of those questions will be for the
15 purpose of unnecessarily prying into your private affairs or
16 certainly not to embarrass you in any way, but there are
17 certain things that may have affected you in life. There are
18 certain relationships that you may have, certain experiences
19 that you may have that would affect you in relation to this
20 case. Each case is different, has different facts and
21 different individuals. Therefore, you might be able to be a
22 fair and impartial juror on another case, but because of
23 relationships and the facts of this case, that you might not
24 be able to be fair and impartial. And that is all we are
25 trying to find out.

26 There are no wrong answers that you can give me
27 unless I ask you a question and it does apply to you, and you
28 do not give me a response. So I want you to think about
29 these questions, and especially if during this process, if

Voir Dire by the Court

1 there is a question I asked earlier in the process, and later
2 on in the process you decide that that question really does
3 apply to you, you just draw my attention back to it, and we
4 will go back and go over that.

5 As jurors, you are required to decide this case on
6 the evidence that comes into open court, the evidence that
7 comes from this witness stand behind me, the exhibits and
8 things that I allow into evidence. At the end of the case, I
9 will give instructions on the law, and the jury will take
10 those instructions and apply them to the facts as the jury
11 sees them, then discuss it with each other, and once they do
12 that, then the jury will reach a verdict based on that. You
13 are not required to leave your common sense at the house.
14 You are entitled to use your sound, honest judgment in
15 evaluating the evidence. You are allowed to use your life
16 experiences in evaluating the evidence. But you are limited
17 by what you can consider as to the evidence that comes into
18 open court. You are not entitled to speculate on what
19 doesn't come into open court. Why didn't they prove this?
20 Well, why didn't they do that? There may be a very valid
21 reason why the lawyers do not produce certain answers to
22 certain questions that you have, but you can't speculate as
23 to what those answers would be. You must judge this case on
24 the evidence that comes into court and the law that I give
25 you at the end of the case. Do each of you understand that?

26 Okay. All right, the State in this case is
27 represented by the District Attorney's Office. The District
28 Attorney represents the State in all criminal prosecutions,
29 and in this district the District Attorney is Doug Evans from

Voir Dire by the Court

1 Grenada. He is assisted by his assistant, Clyde Hill, also
2 of Grenada.

3 This is the State of Mississippi versus Curtis
4 Flowers, as I told you. The Defendant, Mr. Flowers, is
5 represented by Andre de Gruy, Stacy Ferraro and Ray Charles
6 Carter. Are any of you related by blood or marriage to any
7 of the attorneys? (No response) Do any of you know any of
8 the attorneys?

9 All right, sir, if you would stand up. When you
10 respond, I will get you to stand up. She has to take down
11 the answers to all this, and I need to see your number.

12 Q. Number 42. All right, sir. And that is
13 Mr. Hedgepeth?

14 A. (BY JUROR 42, MR. ROBERT SHELTON HEDGEPEETH) Yes,
15 sir.

16 Q. Okay. Who is it that you--

17 A. Ms. Ferraro.

18 Q. You are related to her?

19 A. No, sir, just a friend of hers.

20 Q. Just a friend. Would that relationship or being a
21 friend of hers affect you in this case and keep you from
22 being fair and impartial?

23 A. Uh, I have pretty well got my mind made up already
24 on the case.

25 Q. Okay. I may -- that question is going to be asked
26 to you, asked of you in depth here in a little bit. Right
27 now though, I just need to know the fact that you know her,
28 would that affect you in this case and keep you from being
29 fair and impartial?

Voir Dire by the Court

1 A. No, sir.

2 Q. Okay. Thank you, Mr. Hedgepeth.

3 Anybody else? How many of y'all know any of the lawyers?

4 (No response.)

5 Okay. Mr. Evans, being the District Attorney, of
6 course and representing the State in criminal cases,
7 represents one side of a legal argument in every prosecution
8 there is. Has there been an occasion when the District
9 Attorney's Office has represented a side of the case that you
10 were on? Whether or not you were a victim of a crime or a
11 witness or had a family member or something where the State
12 represented your side of the case? (No response.) Okay.

13 Have any of you been on the other side of a case
14 from the District Attorney's Office where they, in fact, were
15 presenting a case against you or some members of your family?
16 (No response.) Okay.

17 The Defendant in this case is, as I said, Curtis
18 Flowers. Mr. Flowers, if you would stand so they can see
19 you. Thank you, sir. Are any of you related by blood or
20 marriage to Mr. Flowers? (Several hands go up.)

21 Q. All right. Number 43. That is Libby L. Flowers.
22 How are you related to him, Ms. Flowers?

23 A. (BY JUROR 43, MS. LIBBY L. FLOWERS) Marriage.

24 Q. Okay, who is your husband?

25 A. Mike Flowers.

26 Q. Okay. What kin is he to Mr. Flowers?

27 A. Cousins.

28 Q. Okay. Would that relationship affect you to the
29 point to where you could not be fair and impartial in this

Voir Dire by the Court
case?

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A. No.

Q. You think you could set that aside and listen to
the evidence and be fair and impartial?

A. Yes.

Q. All right.

Number 14, Mr. Forrest?

A. (BY JUROR NO. 14, MR. JAMES EARL FORREST) Yes, sir.

Q. And how are you related to him?

A. He is my second cousin.

Q. Okay. Mr. Forrest, would that relationship affect
you at all to the point where you couldn't be fair and
impartial in this case?

A. No, sir.

Q. You could listen to the evidence in this case and
base your decision on that regardless of what that
relationship was?

A. Yes, sir.

Q. Okay. Thank you, sir.

Anybody else that is related to him? (No further
response.) How many of you know Mr. Flowers other than those
who are related to him? (Many hands go up.) Okay, let's
start right here. Yes, sir; if you would stand up, please,
sir. That is number 12, Mr. Buckhalter. How is it that you
know him, Mr. Buckhalter?

A. (BY JUROR NO. 12, MR. JAMES TAYLOR BUCKHALTER)
Because we grew up together.

Q. Okay, do you consider him good friends?

A. That's right.

Voir Dire by the Court

1 Q. Would that relationship then affect you to where
2 you could not be fair and impartial in this case?

3 A. I don't want to be in this.

4 Q. Huh?

5 A. To tell the truth, I done made my mind up. I don't
6 want to be in here.

7 Q. Okay, well, understand, there is a whole lot of
8 folks in here don't want to be in here. And I appreciate
9 that answer. But the question is would your relationship
10 with him be such that it would keep you from being fair and
11 impartial to both sides in this case?

12 A. No.

13 Q. Well, if-- have you made up your mind?

14 A. I have made up my mind.

15 Q. All right. So right now you couldn't be fair and
16 impartial, could you?

17 A. Well, I could.

18 Q. Okay. All right.

19 Yes, ma'am. Number 13.

20 A. (BY JUROR NO. 13, MS. LINDA FLEMING) Yes, I know
21 him.

22 Q. How do you know him, Ms. Fleming?

23 A. Ran with him; went to school with him.

24 Q. You are friends with him and went to school with
25 him?

26 A. Yes, sir.

27 Q. Okay. Ms. Fleming, would that relationship with
28 him affect you to the point where you could not be fair and
29 impartial?

Voir Dire by the Court

1 A. Yes, because I already done made up my mind.

2 Q. Thank you, Ms. Fleming.

3 Number 11, yes, ma'am, Ms. Tharp.

4 A. (BY JUROR NO. 11, MS. LINDA M. THARP) I worked at
5 the Winona Public School for 20 years, and I knew him as a
6 student.

7 Q. Okay, would that relationship affect you to the
8 point where you couldn't be fair and impartial?

9 A. No.

10 Q. Thank you, ma'am.

11 All right, who else? Yes, sir. If you would stand
12 up. Number 20. Mr. Hudson.

13 A. (BY JUROR NO. 20, MR. MICHAEL TERRELL HUDSON) I
14 used to work with him.

15 Q. You used to work with him? Where was that?

16 A. At Richardson Brothers.

17 Q. Okay. Mr. Hudson, would that relationship with him
18 affect you to the point where you couldn't be fair and
19 impartial?

20 A. No, sir. I don't think so.

21 Q. You think you could listen to the evidence that
22 comes from the witness stand and make up your mind based on
23 that rather than your relationship with him?

24 A. Yes, sir.

25 Q. Okay. Thank you, sir.

26 Okay. Who else that knows him? All right.

27 How many of you are presently employed in law
28 enforcement? (No response.) How many of you have ever been
29 employed in law enforcement?

Voir Dire by the Court

1 All right, sir. What is your number, sir?

2 A. (BY JUROR NO. 44, MR. PHILLIP D. CROSS, JR.) 44.

3 Q. Number 44, Mr. Cross?

4 A. Yes, sir.

5 Q. What type of law enforcement were you in?

6 A. I worked with reserve deputy with the Montgomery
7 County Sheriff's Department, and I also worked with
8 Kilmichael Police Department.

9 Q. You worked also with the Kilmichael Police
10 Department?

11 A. Yes, sir.

12 Q. How long ago was that, Mr. Cross?

13 A. With Kilmichael about a year ago, and currently
14 still as a reserve with the Montgomery County Sheriff's
15 Department.

16 Q. Okay, were you a reserve deputy back in '96?

17 A. No, sir.

18 Q. Okay. Mr. Cross, would the fact that you are
19 involved or have been involved with law enforcement and are
20 now, would that affect you to the point where you could not
21 be fair and impartial in this case?

22 A. No, sir.

23 Q. Thank you, Mr. Cross. Anybody else?

24 All right, how many of you -- yes, sir. Number --
25 is that 6?

26 A. (BY JUROR NO. 6, MR. JESSIE J. HEARN) I know the
27 family. I know his mother and dad real well.

28 Q. Okay, we are going to get to that.

29 A. Okay, I'm sorry.

Voir Dire by the Court

1 Q. How many of you have a family member that is in law
2 enforcement? Yes, ma'am. If you would stand, please.
3 Number 39 is Ms. Kemp?

4 A. (BY JUROR NO. 39, MS. WILMA LOYCE KEMP) Yes, sir.
5 I have an uncle is a constable in Texas.

6 Q. Okay, would that fact affect you at all in this
7 case and keep you from being fair and impartial?

8 A. No, sir.

9 Q. Thank you, Ms. Kemp.

10 Yes, ma'am. Number 50. Ms. Richardson.

11 A. (BY JUROR NO. 50, MS. SHERRY ANN H. RICHARDSON) I
12 have a couple of cousins that is in the game warden.

13 Q. Ms. Richardson, would that affect you at all in
14 this case and keep you from being fair and impartial?

15 A. No.

16 Q. Are any of the game wardens here?

17 A. Yes, sir.

18 Q. Which ones?

19 A. Danny Tompkins and Terry Thomas, and Robert
20 Tompkins was my cousin when he was Sheriff.

21 Q. Okay, would that affect you at all in this matter?

22 A. No.

23 Q. Thank you, ma'am.

24 All right, how many of you had a family member who
25 has been in law enforcement in the past? Yes, ma'am. If you
26 would stand, please. Number 30 is Ms. Costilow.

27 A. (BY JUROR NO. 30, MS. NORMA B. COSTILOW) Yes. My
28 husband was Sheriff in Montgomery County.

29 Q. Ms. Costilow, would that affect you at all in this

Voir Dire by the Court

1 case and keep you from being fair and impartial?

2 A. No.

3 Q. Thank you. Yes?

4 A. (BY JUROR NO. 34, MS. JOYCE RATLIFF BUTTS) I had a
5 brother that was a jailer in the Grenada County Jail.

6 Q. Ms. Butts, would that affect you at all in this
7 case?

8 A. No.

9 Q. Thank you, ma'am.

10 Yes, sir. Mr. Cross.

11 A. (BY JUROR NO. 44, MR. PHILLIP D. CROSS, JR.) My
12 father.

13 Q. All right, and where was he an officer?

14 A. Here for the county and Duck Hill.

15 Q. Okay, was he a deputy sheriff or a police officer?

16 A. Deputy.

17 Q. Okay. Would that affect you at all in this matter
18 and keep you from being fair and impartial?

19 A. No, sir.

20 Q. All right.

21 Yes, number 7.

22 A. (BY JUROR NO. 7, MS. JUANDA CHERYL SWANSON) My
23 grandfather.

24 Q. And who was that, ma'am?

25 A. Wanell Lyler. He is deceased now.

26 Q. Okay. Where was he an officer? Here?

27 A. Kilmichael.

28 Q. Kilmichael. With the police department then; is
29 that correct?

Voir Dire by the Court

1 A. Uh-hum.

2 Q. Would that affect you at all in this case?

3 A. Uh-uh.

4 Q. Thank you, ma'am.

5 Anybody else? (No further response.)

6 The way a matter gets to this point is that it
7 comes through the grand jury especially a case of this
8 nature. It always comes through the grand jury. The grand
9 jury, we have two grand juries a year in each county. They
10 are impaneled, a new one is impaneled at each term of court.
11 They serve for six months. The grand jury consists of 20
12 people. Out of those 20 if the case is presented to them and
13 voted on, out of that twelve people vote to return an
14 indictment, then you get an indictment which is the formal
15 charge that comes out of the grand jury and gets us to this
16 point.

17 Now at the grand jury level the grand jury does not
18 determine the guilt or innocence of anybody, and they do not
19 hear all the evidence. Most of the time, almost all of the
20 time they hear nothing but the State's evidence, and they
21 don't even hear all of that. They do not get my instructions
22 on the law, and they hear some evidence that would not be
23 admissible in open court, like hearsay evidence. There are
24 some things like that that can be presented at grand jury
25 that can't be presented at the trial of the case. And the
26 reason for that is, is that the only thing that the grand
27 jury has to determine is whether first, they think a crime
28 has been committed. And if they think that it did, then do
29 they think there is sufficient evidence for it to go further

Voir Dire by the Court

1 against some individual who they charge by indictment. If
2 twelve of them do that out of twenty, then like I say, they
3 return an indictment, and it gets to this point.

4 When it gets to this point, the defendant is
5 presumed innocent until such time as the State proves his
6 guilt beyond a reasonable doubt. The defendant does not have
7 to put on any evidence. He does not have to testify. If he
8 does not testify, I will instruct you at the end of the case
9 that the fact that, you cannot hold the fact that he did not
10 testify as any evidence against him at all. Do each of you
11 understand all that? Okay.

12 Also, when it goes to trial, there will be twelve
13 jurors that will decide the case. All twelve must vote
14 unanimously to find him guilty beyond a reasonable doubt
15 before there can be any verdict in this case. And that is
16 the difference right there between the grand jury and a
17 trial. Also, at that time the defense may put on witnesses
18 at that case even though they don't have to. That jury will
19 also get my instructions on the law telling them exactly what
20 the law is which they are duty bound to follow and apply to
21 the facts as they see it. Do each of you understand that?

22 Okay. I go through all that to tell you, to get to
23 the point to tell you that an indictment is absolutely no
24 evidence of Mr. Flowers' guilt at all in this case. And you
25 must not hold the fact that he has been indicted as any
26 evidence of guilt. Do you each understand that? Is there
27 anybody here that would hold that indictment against him and
28 say well, if he got indicted, he must be guilty of something
29 and let that indictment be some evidence of guilt against

Voir Dire by the Court

1 him? Is there anybody that will do that?

2 I take it now by your silence you will not do that.
3 Okay. The burden of proof, as I just told you in this case,
4 is on the State of Mississippi as it is in all criminal
5 cases, and that burden is beyond a reasonable doubt. The
6 State must prove the defendant's guilt beyond a reasonable
7 doubt. Do any of you feel that that burden is not what it
8 ought to be, that it ought to be something else, either
9 higher or lower or just something else? (No response.) Okay.

10 How many of you have ever been a victim of a crime,
11 and that goes to -- I'm talking about grand larceny, burglary
12 or anything else, but I'm especially talking about any kind
13 of crime of violence. How many of you have ever had that
14 experience? (No response.)

15 How many of you have ever had a family member who
16 has been a victim of a crime? All right. Yes, ma'am. If
17 you would stand up, please. Yes.

18 A. (BY JUROR NO. 36, MS. ROSETTA LOU BOYLES) My son.

19 Q. Number 36 is Ms. Boyles?

20 A. Uh-hum.

21 Q. And who was that, Ms. Boyles?

22 A. My son, Donnie Boyles.

23 Q. Okay. And where did that occur? Where did it
24 happen?

25 A. Here.

26 Q. And what kind of crime was it?

27 A. Felony.

28 Q. Huh?

29 A. Felony.

Voir Dire by the Court

1 Q. I mean but was it burglary or--

2 A. Yeah.

3 Q. Okay. Did that happen to him?

4 A. No. No, sir.

5 Q. Was he charged with?

6 A. Yes, sir.

7 Q. He was charged with it. How long ago was that,

8 Ms. Boyles?

9 A. Somewhere around ten years ago, I think.

10 Q. So that matter is over with; is that correct?

11 A. Right.

12 Q. Is there anything about that that would affect you
13 in this case and keep you from being fair and impartial?

14 A. No, sir.

15 Q. Thank you.

16 A. But can I say something?

17 Q. Well, about that?

18 A. Oh, uh-uh. No, sir. I made a mistake while ago
19 not standing up when the rest of them was.

20 Q. Uh-hum. You are Ms. Boyles that can't hear real
21 well; is that right?

22 A. Yeah, I misunderstood while ago when I should have
23 stood up and said something.

24 Q. Okay, I'm going to talk to you about that in just a
25 little bit, Ms. Boyles.

26 A. Okay.

27 Q. Okay. Yes, ma'am. Number 25. Ms. Billingsley?

28 A. (BY JUROR NO. 25, MS. BETTY JANE BILLINGSLEY) Yes.

29 Q. Okay.

Voir Dire by the Court

1 A. I had a brother die of a violent crime.

2 Q. Okay, how long ago was that, Ms. Billingsley?

3 A. 1997.

4 Q. And where did that occur?

5 A. New Orleans.

6 Q. Is the prosecution of that case over with?

7 A. Yes.

8 Q. Is there anything about that that would affect you
9 at all in this case?

10 A. No, sir.

11 Q. I don't really want to know the facts, but was he
12 murdered? Is that what happened?

13 A. Yes.

14 Q. Would that affect you at all in this case?

15 A. No.

16 Q. Thank you, ma'am.

17 Yes, sir. Number 38. Mr. O'Bryan.

18 A. (BY JUROR NO. 38, MR. DARRELL W. O'BRYAN) Yes. My
19 sister was murdered around 1981.

20 Q. Where did that occur?

21 A. Murder suicide.

22 Q. Where did that occur?

23 A. Here.

24 Q. Okay. Is there anything about that that would
25 affect you at all in this case and keep you from being fair
26 and impartial?

27 A. Yes, sir. I believe it would.

28 Q. Thank you, Mr. O'Bryan.

29 All right, yes, ma'am. Ms. Kemp.

Voir Dire by the Court

1 A. (BY JUROR NO. 39, MS. WILMA LOYCE KEMP) My sister
2 was held at gunpoint in a robbery 15 years ago.

3 Q. Okay. Would that fact affect you at all in this
4 case and keep you from being fair and impartial?

5 A. No, sir.

6 Q. Thank you, ma'am.

7 Anybody else? Number 47. Mr. Bell.

8 A. (BY JUROR NO. 47, MR. BOBBY WAYNE BELL) I had a
9 nephew that was killed in a, murdered in a crime, violent
10 crime. It was in Georgia.

11 Q. How long ago, Mr. Bell?

12 A. It was in '94.

13 Q. Would that fact affect you at all in this case?

14 A. No, sir.

15 Q. Thank you.

16 Yes, ma'am. Number 7.

17 A. (BY JUROR NO. 7, MS. JUANDA CHERYL SWANSON) Can
18 I -- I don't want to talk about it out loud. Can I just tell
19 you?

20 Q. Ma'am?

21 A. It's something I don't want to say out loud.

22 Q. Yes, ma'am. Just hold that thought, and I will go
23 back up on the bench, and we will do it up there. Okay.

24 Anybody else? (No further response.)

25 Okay, the next question -- I'm not trying to
26 unnecessarily pry into anybody's affairs again or try to
27 embarrass you in any way, but it's a question I have to ask.
28 And I need to know that if you or any family member have ever
29 been charged with a felony?

Voir Dire by the Court

1 Yes, ma'am. Ms. Costilow.

2 A. (BY JUROR NO. 30, MS. NORMA B. COSTILOW) Yes.

3 Q. And I believe your husband was; is that correct?

4 That has been what, ten or fifteen years ago?

5 A. Right.

6 Q. Is there anything about that that would affect you
7 at all in this case?

8 A. No.

9 Q. Thank you, ma'am.

10 Yes, number 49.

11 A. (BY JUROR NO. 49, MR. JACKIE D. AUSTIN) Yes, sir.
12 My stepson was charged with a felony; he served time.

13 Q. Mr. Austin, would that affect you in this case and
14 keep you from being fair and impartial?

15 A. No, sir.

16 Q. Thank you.

17 Yes, number 13.

18 A. (BY JUROR NO. 13, MS. LINDA FLEMING) My sister
19 was, about a couple of years ago.

20 Q. Ms. Fleming, would that affect you at all in this
21 case and keep you from being fair and impartial?

22 A. Yes.

23 Q. It would?

24 A. Uh-hum.

25 Q. Okay.

26 All right, number 20. If you would stand up,
27 please, sir. They have got to hear you.

28 A. (BY JUROR NO. 20, MR. MICHAEL TERRELL HUDSON) I
29 have several brothers that have. I'm not sure what they

Voir Dire by the Court

1 were, but I know all of them have.

2 Q. Any of that happen here?

3 A. Yes, sir.

4 Q. Okay. Is any of it going on right now?

5 A. No, sir.

6 Q. Okay. Would that affect you at all in this case
7 and keep you from being fair and impartial?

8 A. I don't think so.

9 Q. Well, I appreciate that answer, but I have got to
10 know.

11 A. No, sir.

12 Q. Okay.

13 Number 29. Mr. Burt.

14 A. (BY JUROR NO. 29, MR. TOMMIE LEE BURT) I had two
15 brothers.

16 Q. What were they charged with?

17 A. Felony.

18 Q. Was it here?

19 A. It was here.

20 Q. Okay, are those matters over with?

21 A. Over with.

22 Q. Is there anything about that that would affect you
23 at all in this case?

24 A. None whatsoever.

25 Q. Thank you.

26 Number 2, Mr. Tanner.

27 A. (BY JUROR NO. 2, MR. BENTON C. TANNER) I have a
28 cousin, felony. He is serving time now.

29 Q. Was it from here?

Voir Dire by the Court

1 A. Yes, sir.

2 Q. How long ago was that, Mr. Tanner?

3 A. Last -- year and a half.

4 Q. Would that fact affect you at all in this case?

5 A. No, sir.

6 Q. Thank you.

7 Yes, sir. Number 44.

8 A. (BY JUROR NO. 44, MR. PHILLIP D. CROSS, JR.) My
9 brother, charged with a felony.

10 Q. I'm sorry?

11 A. My brother, charged with a felony.

12 Q. Was that here?

13 A. Yes.

14 Q. Is it over with?

15 A. (No immediate response.)

16 Q. When was it?

17 A. Six months ago.

18 Q. Okay. So it may be going on now; is that right?

19 A. Um, yes. It is over--

20 Q. Okay. Would that affect you, Mr. Cross, at all?

21 A. No.

22 Q. Keep you from being fair and impartial?

23 A. No.

24 Q. Thank you.

25 Number 21. Ms. Flowers. Could you stand up,
26 please.

27 A. (BY JUROR NO. 21, MS. CARRIE A. FLOWERS) Yes. I
28 had a stepson convicted of a felony. He got restitution and
29 probation; it is over with.

Voir Dire by the Court

1 Q. Okay, would that affect you, Ms. Flowers, at all?

2 A. No.

3 Q. Thank you.

4 Anybody else? Yes, ma'am.

5 A. (BY JUROR NO. 15, MS. RHONDA M. TOWNSEND) An
6 uncle.

7 Q. 15. Yes, ma'am.

8 A. An uncle. Uncle convicted of a felony.

9 Q. An uncle, okay. Ms. Townsend, was that here?

10 A. Yes, sir.

11 Q. Would that affect you at all in this case?

12 A. No, sir.

13 Q. Thank you.

14 Anybody else? Number 34.

15 A. (BY JUROR NO. 34, MS. JOYCE RATLIFF BUTTS) I have
16 several nephews convicted.

17 Q. Ms. Butts, was any of that here or in this
18 district?

19 A. Here.

20 Q. Okay. How long ago was it, Ms. Butts?

21 A. One nephew's case is going on now.

22 Q. Okay. Would that fact affect you at all in this
23 case and keep you from being fair and impartial?

24 A. No, sir. No, sir.

25 Q. Thank you.

26 Number 50. Ms. Richardson.

27 A. (BY JUROR NO. 50, MS. SHERRY ANN H. RICHARDSON) My
28 ex-husband was convicted.

29 Q. How long ago was that, Ms. Richardson?

Voir Dire by the Court

1 A. Ten years ago.

2 Q. Was there here--

3 A. --in Grenada County.

4 Q. Where?

5 A. In Grenada County.

6 Q. Okay. Would that affect you at all in this case
7 and keep you from being fair and impartial?

8 A. No, sir.

9 Q. Thank you.

10 Okay. Anybody else? Yes, ma'am.

11 A. (BY JUROR NO. 7, MS. JUANDA CHERYL SWANSON) An
12 uncle.

13 Q. Ms. Swanson, did that occur here?

14 A. Some of it was here, but I don't know if he was
15 ever convicted here, but it is in Rankin County and--

16 Q. Oh, okay. How long ago was that?

17 A. Five or six years.

18 Q. Would that affect you in this case and keep you
19 from being fair and impartial?

20 A. No, sir.

21 Q. Thank you, ma'am.

22 Anybody else? (No further response.) Okay.

23 At the end of the case, I'm going to give you
24 instructions on the law. Under your oath as jurors, you are
25 required to follow those instructions on the law, and you are
26 required to do that even if you don't agree with them. It's
27 just the way it works. I get to decide the law. Y'all get
28 to decide the facts. Now I'm going to give those to you in
29 writing. You can take those instructions and apply them to

Voir Dire by the Court

1 the facts as you see them, but you are required to follow my
2 instructions on the law. Is there anybody here will not
3 follow my instructions on the law if they disagree with them?
4 (No response.) Okay.

5 Do any of you have any religious or philosophical
6 beliefs that would prohibit you from passing judgment on your
7 fellow man?

8 Q. All right, number 40. Yes, ma'am.

9 A. (BY JUROR NO. 40, MS. LAURA RENAE ROBERTSON) I
10 could never vote for the death penalty.

11 Q. Okay, I'm going to get to that in a minute. Right
12 now this -- well, if you would stand up, please, ma'am.
13 Ms. Robertson, this could be a two phased trial. It could
14 be, it could be a-- it will be one phase for sure, and that
15 will be to determine the guilt or innocence.

16 A. I can pass judgment.

17 Q. If the jury determines that he is guilty, at the
18 second phase you will decide the penalty.

19 A. Okay.

20 Q. And without -- I'm going to ask you the death
21 penalty question in a minute. But other than that
22 prohibition, would you have any philosophical belief --

23 A. -- No, sir.

24 Q. Let's say if you were just trying a case; the death
25 penalty wasn't involved. Do you have a belief that would
26 prohibit you from passing judgment in that case?

27 A. No, sir.

28 Q. Thank you, Ms. Robertson.

29 Anybody else? (No response.)

Voir Dire by the Court

1 Okay. This is a capital murder case. The first
2 phase of the trial is solely for the purpose of determining
3 whether or not the defendant is guilty of what he is charged
4 with. The jury at that time, as I have told you, must find,
5 all twelve jurors must find beyond a reasonable doubt that he
6 is guilty before they can return a verdict in that phase of
7 the trial. If, in fact, they do that, then we go to the
8 second phase. At the second phase the issue will be what the
9 punishment would be, and this is one of those cases where the
10 jury decides that. And the options will be the death
11 penalty, or they will be life if we get to that point. Do
12 each of you understand that? Do any of you have a religious
13 or philosophical or personal belief that would, in opposition
14 to the death penalty that would prevent you from imposing it?
15 Okay. Yes, sir. And stand up, please, so I can get your
16 number.

17 A. (BY JUROR NO. 38, MR. DARRELL W. O'BRYAN) Darrell
18 O'Bryan, sir.

19 Q. Okay, thank you, Mr. O'Bryan. We are going to -- I
20 need to just -- this is a preliminary question. We will have
21 some more in depth questions later on, but I need that one on
22 the front end.

23 There was another hand. The lady that just stood
24 up, Ms. Robertson.

25 A. (BY JUROR NO. 40, MS. LAURA RENEA ROBERTSON) Yes,
26 sir.

27 Q. Okay. All right, who else? Yes, sir. If you
28 would stand up, please, sir. Number 24. Mr. Phillips.

29 A. (BY JUROR NO. 24, MR. GEORGE PHILLIPS) That's

Voir Dire by the Court
right.

Q. All right, thank you.

Number 20, Mr. Hudson. Who else? Number 36,
Mr. Boyles; number 15, Ms. Townsend; number 12, Mr.
Buckhalter; number 2, Mr. Tanner; number 4, Ms. Kirkwood;
number 32, Ms. Moore; number 13, Ms. Fleming; number 26, Mr.
Johnson. 28, are you holding up yours?

A. (BY JUROR NO. 28, MS. EDDIE M. ALLEN) Yes.

Q. Okay, stand up, please, ma'am. Ms. Allen?

A. Right.

Q. Okay. All right. Yes, sir, number 29, Mr. Burt.
Anybody else? Did I miss anybody?

Okay. The next question I'm going to ask you is --
basically, you can just give me a show of hands. We are
going to ask you some more questions in depth about this, and
I probably already know the answer to this question before I
ask it, but I'm just going to make sure that I do. The
indictment -- which I told you does not, is not any evidence
of guilt at all, but it states the charge -- states that on
July the 16th, 1996, that Mr. Flowers did kill and murder
Bertha Tardy, BoBo Stewart, Carmen Rigby, and Robert Golden
at the Tardy Furniture Company in Winona.

How many of you know something about that? Just
raise your hand. (Hands go up.) Okay. Who does not know
anything about it? Okay, let me get -- if you would stand,
sir, so I can get your number.

(Number 26 raised his card.)

Q. Okay. All right, thank you, sir. There was
somebody else? There was another hand. Stand, please,

Voir Dire by the Court

ma'am. Number 31, Ms. McChristion. And number 43, Ms. Flowers.

A. (BY JUROR NO. 43, MS. LIBBY L. FLOWERS) Uh-hum.

Q. Ms. Flowers, you are kin to him. You don't know anything about this?

A. I ain't heard.

Q. You haven't ever heard of it?

A. I heard, but I sure don't know nothing about it.

Q. Okay.

A. (Inaudible) so I don't know.

Q. Number 52, Ms. Young.

A. (BY JUROR NO. 52, MS. IRESHA K. WITTY YOUNG) I heard of it but know nothing about it.

Q. Okay. Anybody else? (No further response) Okay.

Ladies and gentlemen, at this point in time we are going, we have to talk to you individually. It's not for the purpose of singling you all out, but obviously, all of you or just about have at least heard of this case, and we have to determine what you have heard and whether it will influence you. We don't want what you have heard to influence anybody else on the jury panel. Therefore, we have to do this individually at this time.

We also have some questions about the death penalty that we will need to ask that we need to ask those individually too. So I'm going to ask you if you will, if you will step out of the courtroom. The bailiffs will come and get you as we need you, and we will run you through individually.

(THE JURY PANEL LEFT THE COURTROOM, AND THEN THERE

Preliminary Matter - JURY OUT

1 WAS THE FOLLOWING IN OPEN COURT WITH ALL COUNSEL AND THE
2 DEFENDANT PRESENT BUT WITH THE JURY OUT.)

3 **BY THE COURT:** Let the record reflect that
4 earlier this morning the Court was approached by Ann
5 Austin's husband who is -- Ms. Austin was one of the
6 jurors, one of the 26 jurors who qualified on the
7 first day and was in the pool for the selection of the
8 jury and was directed to be back in court today at 1
9 o'clock. Her husband appeared here at 9 o'clock and
10 informed the Court that she was in such an emotional
11 state over this that she would be unable to serve. In
12 fact, she is going to have to go to the doctor this
13 morning and that she spent the whole night in tears
14 over this matter. I asked, I have explained this to
15 counsel for both sides. I asked Mr. Austin if he
16 would bring Ms. Austin in so that everybody could see
17 her state. And she did come in, and she was still in
18 an emotional state. And so this Court is of the
19 opinion that she would be unable to serve and listen
20 to the testimony and do the deliberations necessary
21 over the period of time that this is going to take.
22 Therefore, I excused Ms. Austin for that reason. The
23 attorneys at that time told me they had no, were there
24 when we did this, and they had no objection to me
25 excusing her. Is that correct, gentlemen?

26 **BY MR. EVANS:** Yes, sir.

27 **BY MR. DE GRUY:** Yes, sir.

28 **BY MR. CARTER:** Yes, sir.

29 **BY THE COURT:** Okay, so she is excused. All

Preliminary Matter - JURY OUT

1 right. Bring Ms. Swanson in. Let the record reflect
2 also this. The Court originally drew a panel of 300,
3 a venire of 300 persons to report on the first day.
4 We have now been through that 300 persons. That many
5 didn't show up, but that's how many the venire was.
6 We have been through that panel.

7 We are now working on the second panel. The
8 Court had drawn at the same time it drew the first
9 300, drew 200 more to report today. We are working on
10 that panel, and for the sake of the record, we will
11 call that as panel number two. It starts with juror
12 Rosette Rogers. I make that statement because the
13 numbers on the list that you have, gentlemen, starts
14 over at 1. And that is going to get a little
15 confusing for the record, and I want the record to
16 reflect that all the jurors we are dealing with today,
17 even though they may have that number, are from panel
18 number two.

19 When we get the folks that qualify for this panel
20 then will be put with the other panel starting with
21 number -- they will be numbered 26. The other panel
22 will start 1, 2, 3, 4, 5 through 25, and as we add
23 them, it will be 26, 27, 28. Does everybody
24 understand that? I hope that is clear enough for the
25 record.

26 (JUROR NO. 7, MS. JUANDA CHERYL SWANSON, enters the
27 courtroom.)

28 INDIVIDUAL VOIR DIRE BY THE COURT:

29 Q. Ms. Swanson, I have been given some -- you wanted

Individual Voir Dire - JURY OUT

1 to tell me something, but I think I have got some information
2 that I need to know too. My understanding is you have by
3 your questionnaire and by what a bailiff told me this
4 morning, you have a child that has an anxiety problem. Is
5 that correct?

6 A. Yes, sir.

7 Q. To the point to where he has to see you every day
8 and be with you every day?

9 A. Yes, sir.

10 Q. I assume that if he doesn't, then he has one of
11 these attacks. Is that correct?

12 A. I hate to set him back. He is doing fine now, but
13 I hate to taking a chance.

14 Q. You think that would -- how long has he been having
15 this condition?

16 A. Six months or so, about six.

17 Q. Okay, and he is under medication and a doctor's
18 care for that?

19 A. He is under a doctor's care.

20 Q. And as I was informed by the bailiff this morning,
21 him being with your husband is not sufficient?

22 A. He would be okay if he had to be. I hate to do it,
23 put him through it if I didn't have to.

24 Q. Well.

25 A. I hate to, but if I had to, I could. I don't know
26 how he would handle it.

27 Q. Well, of course, I don't want to do anything to
28 hurt your child, Ms. Swanson, so you are going to have to
29 tell me.

Individual Voir Dire - JURY OUT

1 A. I believe it would. I believe it would.

2 Q. You believe it would set him back?

3 A. Because I didn't even tell him I was coming here
4 today.

5 Q. Okay, all right. Thank you, ma'am. You may step
6 down right now.

7 A. Just go back out here?

8 Q. Yeah, I will have some information for you shortly.

9 (Juror 7, Ms. Swanson, leaves the courtroom.)

10 **BY THE COURT:** Does either side have any
11 objection to me excusing her for that reason?

12 **BY MR. EVANS:** No, sir.

13 **BY MR. DE GRUY:** No, Your Honor.

14 **BY MR. EVANS:** That is juror number 7 on the new
15 panel?

16 **BY THE COURT:** Number 7 on the new list. All
17 right, Ms. Boyles.

18 (JUROR NO. 36, MS. ROSETTA LOU BOYLES, enters the
19 courtroom.)

20 INDIVIDUAL VOIR DIRE BY THE COURT:

21 Q. Just have a seat right there, Ms. Boyles. I have
22 got a couple of questions I need to ask you. This is number
23 36, Ms. Boyles; is that right?

24 A. Yes, sir.

25 Q. Okay. Ms. Boyles, you had something you wanted to
26 tell me while ago and said that you didn't speak up earlier.
27 Would you like to tell me that now?

28 A. I have got a daughter-in-law I tend to. She is a
29 schizophrenic.

Individual Voir Dire - JURY OUT

1 Q. Yes, ma'am.

2 A. And nobody can't handle her too good besides me.

3 Q. You are the only one?

4 A. Well, sometimes I have to, I get somebody to, you
5 know. She don't take her medicine good for nobody else.

6 Q. Okay.

7 A. I have a time myself sometimes.

8 Q. Okay.

9 A. And too, my memory is not good enough.

10 Q. Your memory is not good enough?

11 A. Yeah. Yes, sir.

12 Q. The bailiff indicated to me too you might be a
13 little bit hard of hearing; is that correct?

14 A. Yeah, a little bit.

15 Q. Thank you, Ms. Boyles. You may step down. I will
16 have some information for you here shortly.

17 A. Okay, thank you.

18 (Juror 36, Ms. Boyles, leaves the courtroom.)

19 **BY THE COURT:** I would have excused her at the
20 earlier part because of schizophrenic daughter had I
21 had that information. So I'm going to excuse her now.
22 Anybody have any objection to that?

23 **BY MR. EVANS:** No, sir.

24 **BY MR. DE GRUY:** No, Your Honor.

25 **BY THE COURT:** Okay, take her off. Okay.

26 Rosette Rogers.

27 (JUROR NO. 1, MS. ROSETTE ROGERS, enters the
28 courtroom.)

29 INDIVIDUAL VOIR DIRE BY THE COURT:

Individual Voir Dire - JURY OUT

1 Q. State your name, please, ma'am.

2 A. Rosette Rogers.

3 Q. Ms. Rogers, do you know anything about this case?

4 A. Just what I have heard, you know.

5 Q. How did you hear it? From street talk or gossip?

6 A. Yeah, street talk and the radio along when it -- it
7 happened long ago, you know.

8 Q. And media? You did say you heard media?

9 A. Uh-huh.

10 Q. Okay. Do you know any of -- did you know any of
11 the victims?

12 A. Yes, I did.

13 Q. Which ones did you know?

14 A. Carmen.

15 Q. Ms. Rigby?

16 A. Uh-huh.

17 Q. Okay. Did you know her family, or do you know her
18 family?

19 A. I do.

20 Q. Have you ever had any conversations with her
21 family, or have they discussed this in your presence?

22 A. No.

23 Q. Did you know any of the other victims or their
24 families?

25 A. No.

26 Q. Do you know Mr. Flowers?

27 A. No.

28 Q. Do you know anybody in his family?

29 A. No.

Individual Voir Dire - JURY OUT

1 Q. Okay. Ms. Rogers, have you formed an opinion about
2 this case?

3 A. No, I haven't because I don't know what evidence
4 you have.

5 Q. Okay. If you are selected on the jury, of course,
6 you would be seated in the jury box, and you would be
7 required to listen to the evidence in this case. After you
8 had heard the evidence, you would get my instructions on the
9 law which you would apply to the evidence as you see it.
10 Then you discuss it with your fellow jurors, and after doing
11 that, could you base your decision on that rather than what
12 you may have heard or read?

13 A. Yeah, you have to.

14 Q. Okay, do you think you can be a fair and impartial
15 juror?

16 A. I do.

17 Q. All right. Ms. Rogers, as I told you, this is a
18 death penalty case. You did not indicate that you had any
19 religious or philosophical belief against the death penalty;
20 is that correct?

21 A. That's correct.

22 **BY THE COURT:** Mr. Evans.

23 **BY MR. EVANS:** Thank you, Your Honor.

24 INDIVIDUAL VOIR DIRE BY MR. EVANS:

25 Q. Good morning, Ms. Rogers. Ms. Rogers, as the
26 Judge -- well, I don't know that he even went into that this
27 morning, but at this phase in any trial this Defendant or any
28 defendant is presumed by law to be innocent. That is because
29 the defendant does not have to prove anything. The burden of

Individual Voir Dire - JURY OUT

1 proof is on the State of Mississippi. You understand that
2 theory?

3 A. I do.

4 Q. Now that presumption of innocence goes with him
5 until such point as the State of Mississippi may have proven
6 to the jury beyond a reasonable doubt that the defendant is
7 guilty. And if the State does that, then that presumption is
8 no longer there to protect him. Do you understand that?

9 A. I do.

10 Q. Now what we are attempting to do here is find a
11 jury that can disregard anything that they may have heard,
12 base their decision strictly on the evidence that comes out
13 in the courtroom, and make a decision of guilt or innocence
14 on nothing other than the evidence that comes out in the
15 courtroom and the law that the Judge gives the jury. Can you
16 do that?

17 A. I can.

18 Q. And I want to go a step further. As the Judge has
19 told you, this is a capital murder case. One of the two
20 possible penalties would be death. The other would be life.
21 The way that would work, in the first phase the jury that is
22 picked is not even to consider what the penalty might be.
23 But when we get to the second phase, the State would put on
24 evidence that is called aggravating factors. That would be
25 an attempt for us to try to convince the jury that the proper
26 penalty should be death. The Defense will put on what is
27 called mitigating factors. That may be anything about his
28 life, age or anything like that in an attempt to try to show
29 that, to the jury that the penalty should be life instead of

Individual Voir Dire - JURY OUT

1 death.

2 The Judge will then tell the jury the instructions,
3 and in those instructions the Judge will tell the jury how to
4 view these things, what they are to do step by step in
5 reaching a decision on what penalty is appropriate. Can you
6 tell us that before you even considered what penalty would be
7 appropriate, you would listen to both sides? You would
8 listen to the Judge's instructions and follow those
9 instructions?

10 A. I can.

11 Q. And can you tell us now that you wouldn't
12 automatically vote for life, or you wouldn't automatically
13 vote for death? You would follow the instructions and listen
14 to the evidence and base your decision strictly on that?

15 A. I sure can.

16 **BY MR. EVANS:** Nothing further, Your Honor.

17 FURTHER VOIR DIRE BY THE COURT:

18 Q. Okay, let me ask you specifically this way. If I
19 told you at some point in time that the law authorized it and
20 you found that the facts warranted it, could you impose the
21 death penalty?

22 A. I could.

23 **BY THE COURT:** Okay.

24 **BY MR. DE GRUY:** Thank you, Your Honor.

25 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

26 Q. Ms. Rogers, you indicated that you had heard some
27 information about the case. Could you tell us what it is you
28 have heard?

29 A. All I know is, is just that they were killed. I

Individual Voir Dire - JURY OUT

1 mean as far as that goes. I don't know any, you know, just
2 specific information.

3 Q. And how--

4 A. -- It has been so long ago, I wouldn't even
5 remember it no way, because it is.

6 Q. And how was it that you heard this? Was this just
7 talk on the street, or did you read it in the paper?

8 A. I figure, I guess in the paper or street too, you
9 know. I don't, you know, it has been too long ago to
10 remember that.

11 Q. Okay, and you--

12 A. -- Everybody would know that.

13 Q. You don't remember any details. Is that what you
14 are telling us?

15 A. No, I don't remember, and I don't remember any
16 details.

17 Q. Now you said that you were friends with Ms. Rigby
18 and her family?

19 A. Yes.

20 Q. Where, where are you friends from? Is this church?

21 A. Church.

22 Q. And how well do you know them?

23 A. Well, I went to church with them. And after Carmen
24 was killed, some of the ladies from the church helped Benny
25 at his house, you know, a while, you know, getting things
26 straight and all, and I was one of those.

27 Q. And I assume you were at the funeral?

28 A. Yes, I was at the funeral.

29 Q. Now you understand that what the Judge has told you

Individual Voir Dire - JURY OUT

1 and what Mr. Evans has told you; we are trying to find a jury
2 of people who can start out neutral, that they are not
3 connected unfairly to one side or the other?

4 A. I understand.

5 Q. And at this point all we are doing is asking jurors
6 for their honest feelings. And so my question is having this
7 close relationship with the Rigby family and actually being
8 involved in assisting Mr. Rigby through the grief process, do
9 you believe that you can be a fair juror in determining not
10 only guilt or innocence, but once that decision has been
11 made, if you were to vote guilty, do you think that you would
12 be a fair juror in determining sentencing?

13 A. I believe I could. In fact, I know I could.

14 Q. You know you could?

15 A. (Juror nods her head.)

16 Q. That the fact that you are a close friend of Mr.
17 Rigby and that you helped through the grief process?

18 A. That doesn't, that doesn't matter; that part
19 doesn't. You, when you come here, you come to listen to the
20 evidence, what is presented before you, and you make your
21 decision from that. Not from who your friends are or
22 anything like that. My opinion.

23 Q. And you are telling us that you could set any
24 personal feelings aside--

25 A. I sure can.

26 Q. --and just base the decision on the evidence?

27 A. I sure could.

28 Q. And I assume you still see the Rigby's at church?

29 A. No, they don't go to church there no more. I

Individual Voir Dire - JURY OUT

1 haven't seen -- it has been um, five or six years since he
2 has been there.

3 Q. Do you think -- now whatever verdict you return, it
4 will be returned in open court. Everybody will know what
5 decision you have made.

6 A. Uh-hum.

7 Q. And so you may see the Rigby's in the future. Do
8 you think that when you are deliberating the case, the fact
9 that whatever decision you make, you may have to face them.

10 A. Yes.

11 Q. These friends of yours--

12 A. Listen, when I got this summons, I really sit and
13 thought about it, what I was going to have to do. And I came
14 to the decision that either, if the evidence proved he was
15 innocent or guilty, either one, I had to go by that.

16 Q. Okay. And so then the next phase; if you are
17 convinced beyond a reasonable doubt that Mr. Flowers is
18 guilty, can you set your personal feelings and experience in
19 helping Mr. Rigby, can you set that aside and make your
20 decision based on the evidence you hear?

21 A. The evidence, I can.

22 Q. Right now as you sit here, do you have an opinion
23 about the appropriate sentence?

24 A. What are you talking about now?

25 Q. For--

26 A. -- Do I think he is guilty or innocent? Is that
27 what you are asking?

28 Q. No. The appropriate sentence if he is found
29 guilty.

Individual Voir Dire - JURY OUT

1 A. Do I have an opinion about it?

2 Q. Yes.

3 A. Well, if the crime warrants it.

4 Q. So if he is guilty, then you think he should get
5 the death penalty?

6 A. Well, under certain circumstances. I haven't heard
7 any of the evidence or anything like that, so I don't know.

8 Q. I understand. That is the unfair thing to everyone
9 here.

10 A. That's what I'm saying. I cannot give you an
11 answer to that.

12 Q. So we are not asking you to make a decision or
13 return a verdict. We would never do that without you hearing
14 the evidence, but what I'm hearing you say is I want to hear
15 the evidence, and if he is guilty, then he should get the
16 death penalty.

17 BY MR. EVANS: Your Honor, I object. That is not
18 what she said. That is specifically--

19 BY THE COURT: -- Okay, I'm going to put it to
20 her. I will put it to her, the reverse Witherspoon.
21 Then you can follow up on that because that is the way
22 it is supposed to be done.

23 FURTHER VOIR DIRE BY THE COURT:

24 Q. At that stage of the trial, if we get to that
25 stage, what is going to happen is there will be additional
26 evidence. Now they may adopt some of the evidence from the
27 first part without putting it back on, and you will be able
28 to consider that. But they are going to put on additional
29 evidence. The State is going to put on additional evidence

Individual Voir Dire - JURY OUT

1 to prove what is called aggravating circumstances. Those
2 circumstances would be, would lean or tend to favor the death
3 penalty. The defendant will in all likelihood put on
4 mitigating circumstances. They may be almost anything. They
5 will be things like -- it could even be back what his school
6 record was or what his work history was. They will be things
7 about his life that would tend to show that he ought not to
8 get the death penalty. At the end of that, that presentation
9 there will be a written instruction from me that will include
10 those factors in there, and it will tell the jury how they
11 should apply those and how they should consider them in
12 rendering the verdict. Then the jury will take those
13 considerations, and they will render such verdict as they see
14 fit. Do you understand that?

15 A. Uh-huh.

16 Q. Okay. The options that they are going to have are
17 life and death. The question is at that phase of the trial
18 because he has been convicted, would you automatically impose
19 the death penalty and not consider that other evidence or my
20 instructions or life as an option?

21 A. Oh, no. Uh-uh.

22 **BY THE COURT:** Okay, now you may follow up on
23 that.

24 FURTHER VOIR DIRE BY MR. DE GRUY:

25 Q. Well, we'll back up and just talk about the death
26 penalty in general. Just killing someone is not a death
27 penalty offense in Mississippi.

28 A. I know that.

29 Q. That it generally has to, a killing that occurs

Individual Voir Dire - JURY OUT

1 during another offense such as a robbery. That is what is
2 called capital murder in Mississippi. Do you understand
3 that?

4 A. (Juror nods her head.)

5 Q. Okay. So the only time a jury could consider the
6 death penalty would be if they had found beyond a reasonable
7 doubt that the person was guilty of capital murder, killing
8 during the commission of a robbery. Do you understand that?

9 A. I understand that.

10 Q. Okay. And my question is at that point and you
11 know the person is guilty beyond a reasonable doubt of
12 capital murder, would you then say you are not going to hear
13 evidence of self-defense or anything like that?

14 **BY THE COURT:** There wouldn't be any evidence of
15 self-defense at that stage.

16 **BY MR. DE GRUY:** Exactly.

17 Q. You have decided that the person killed during the
18 commission of a robbery, and they are guilty of capital
19 murder. Would you listen to other evidence unrelated to the
20 crime, or would you have already made up your decision on the
21 sentence?

22 A. I would listen to the other evidence.

23 Q. Okay. Would you be -- in that situation would you
24 be leaning towards the death penalty?

25 A. I don't know.

26 Q. Prior to getting the summons in this case, had you
27 given much thought to the death penalty?

28 A. As any penalty?

29 Q. Just as a--

Individual Voir Dire - JURY OUT

1 A. -- yeah, yeah, certain crimes, you know, would
2 warrant the death penalty but under certain circumstances.

3 Q. Okay. Could you give me an example?

4 A. Well.

5 **BY MR. EVANS:** Your Honor, that is not proper.

6 **BY THE COURT:** That's not proper. You can ask
7 her how she feels about the death penalty, but that is
8 not proper.

9 **BY MR. DE GRUY:**

10 Q. Do you think that for certain crimes the death
11 penalty should be automatic?

12 A. Well, not automatic. I mean there are certain
13 circumstances and all that. I can't, I can't explain how,
14 you know.

15 Q. So you are telling us you would always want to hear
16 something about the person's life?

17 **BY MR. EVANS:** Your Honor, I object. I think we
18 have gone through this thing plenty of times.

19 **BY THE COURT:** I believe she has answered the
20 question, Mr. de Gruy, every way she can answer it and
21 every way it can be presented.

22 **BY MR. DE GRUY:** I have no further questions.

23 **BY THE COURT:** You may step down, Ms. Rogers.

24 **BY THE JUROR:** Can I can go back outside?

25 (Juror 1, Ms. Rogers, leaves the courtroom.)

26 **BY THE COURT:** Any objection to her?

27 **BY MR. EVANS:** No, sir.

28 **BY MR. DE GRUY:** No, Your Honor.

29 **BY THE COURT:** Okay. Okay, number 2.

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Your Honor, before we--

2 **BY THE BAILIFF:** Are they--

3 **BY THE COURT:** Ms. Swanson and Ms. Boyles can go.

4 I didn't tell you that.

5 **BY THE BAILIFF:** Yeah, okay. Are these going to
6 the board room?

7 **BY THE COURT:** Yes. She goes to the room.

8 (JUROR NO. 2, MR. BENTON C. TANNER, enters the
9 courtroom.)

10 **BY MR. EVANS:** I will ask in a minute. I will
11 ask what I was going to ask in a minute.

12 **BY THE COURT:** Oh, okay. I'm sorry.

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. Would you state your name, please, sir.

15 A. Benton Curtis Tanner.

16 Q. Mr. Tanner, have you heard anything about this
17 case?

18 A. Hearsay.

19 Q. Street talk and gossip?

20 A. Street talk and gossip basically.

21 Q. How about media coverage? Did you see or hear any
22 of that?

23 A. No, sir. I got no chance to get any of that
24 information other than what was viewed on the news here
25 recently.

26 Q. Okay. Where did you live back when this happened?

27 A. Oh.

28 Q. In Montgomery County?

29 A. Yeah, in Montgomery County.

Individual Voir Dire - JURY OUT

1 Q. Okay. Were you aware of it when it happened?

2 A. Yeah, I remember it being, you know, discussed back
3 then.

4 Q. Okay. Did you know any of the victims or their
5 families?

6 A. Not at that time.

7 Q. Okay, do you know any of the victims' families now?

8 A. Yes, I do.

9 Q. Who is that?

10 A. Archie Flowers.

11 Q. No, no, no. Victims' families?

12 A. Oh, no, no. I'm not listening. Yeah -- no, I
13 didn't. I have no knowledge of any of them.

14 Q. Okay. Do you know Mr. Curtis Flowers?

15 A. No, sir. I don't.

16 Q. But you say you know his father?

17 A. No, I know a relative, I think, Archie Flowers,
18 might be a relative.

19 Q. Okay, how do you know him?

20 A. Work related.

21 Q. Where do you work?

22 A. With Kruger International over here.

23 Q. Kruger?

24 A. Yes.

25 Q. You work with him now?

26 A. Not now. It has been -- now he has been gone two
27 years roughly.

28 Q. Did he ever discuss this matter with you or in your
29 presence?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Mr. Tanner, have you formed any opinion as to the
3 guilt or innocence of Mr. Flowers based on what you have
4 heard?

5 A. No, sir. I haven't.

6 Q. Do you know of any reason that you could not be a
7 fair and impartial juror in this case?

8 A. Well, yes. I am also a Methodist pastor, and I
9 don't think that I could place fair judgment in a situation
10 like this. I couldn't, I wouldn't even vote in approval of
11 the capital punishment.

12 Q. Okay, I may get to that question in a minute. Do
13 you think because you are a minister, you would have a
14 problem passing judgment on any phase of this trial, at the
15 guilt phase say?

16 A. Probably so.

17 Q. Okay. And that would be because of your religious
18 beliefs?

19 A. Because of my religious beliefs, yes, it would.

20 **BY THE COURT:** Mr. Evans.

21 **BY MR. EVANS:** No questions, Your Honor.

22 **BY THE COURT:** Mr. de Gruy?

23 **BY MR. DE GRUY:** No questions, Your Honor.

24 **BY THE COURT:** Thank you, Mr. Tanner. You may
25 step down.

26 (Juror 2, Mr. Tanner, leaves the courtroom.)

27 **BY MR. EVANS:** I am trying to keep my numbering
28 straight.

29 **BY THE COURT:** Good luck.

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Ms. Rogers, is she number 26? Is
2 that right?

3 **BY THE COURT:** Ms. Rogers will be number 26. And
4 what we are going to do, when we get through with this
5 panel, we are going to get a new list of those who
6 have made it. And it will start with 1 and go through
7 that.

8 **BY MR. EVANS:** I was trying to keep up with them
9 as we go.

10 **BY THE COURT:** And then you can keep that list
11 over to this side and still mess with this other list.

12 **BY MR. EVANS:** All right, I move for cause on
13 Mr. Tanner.

14 **BY THE COURT:** Any objection to that?

15 **BY MR. DE GRUY:** No objection.

16 **BY THE COURT:** Okay. He can go home. That
17 motion is granted.

18 (JUROR NO. 3, MS. ALISHA MARIE KING, enters the
19 courtroom.)

20 INDIVIDUAL VOIR DIRE BY THE COURT:

21 Q. State your name, please, ma'am.

22 A. Alisha King.

23 Q. Ms. King, have you ever heard anything about this
24 case?

25 A. Yes, sir.

26 Q. How did you hear it?

27 A. The news, newspapers.

28 Q. Okay, did you ever hear any word of mouth, street
29 talk or gossip?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Did you know any of the victims?

3 A. Yes, sir. I went to school with BoBo.

4 Q. Do you know his family?

5 A. Just BoBo.

6 Q. How about any of the other people who--

7 A. I know Ms. Carmen's family. I went to school with
8 Benjy and Bryan also.

9 Q. Okay.

10 A. And his, and their father was also our church
11 minister of music.

12 Q. Have you ever discussed this matter with them or
13 heard them discuss it?

14 A. No, sir.

15 Q. Did you know Mr. Flowers, or do you know him?

16 A. No, sir.

17 Q. Do you know any of his family?

18 A. Not besides his father and that is because, you
19 know, of Wal-Mart.

20 Q. Wal-Mart?

21 A. Uh-hum.

22 Q. Okay. Do you work at Wal-Mart?

23 A. I used to, but that was before Mr. Flowers was--

24 Q. Worked there?

25 A. Was hired.

26 Q. Okay. Ms. King, have you, based on what you have
27 heard and your relationships with some of the victims'
28 family, have you formed an opinion as to the guilt or
29 innocence of Mr. Flowers in this matter?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Would that keep you from being fair and impartial?

3 A. Yes, sir.

4 BY THE COURT: Mr. Evans?

5 BY MR. EVANS: No questions, Your Honor.

6 BY MR. DE GRUY: No questions, Your Honor.

7 BY THE COURT: Thank you, ma'am.

8 (Juror 3, Ms. King, leaves the courtroom.)

9 BY THE COURT: I excuse her for cause. Any
10 objection?

11 BY MR. EVANS: No objection.

12 BY MR. DE GRUY: No objection.

13 BY THE COURT: All right.

14 (JUROR NO. 4, MS. SHAUNDA KIRKWOOD, enters the
15 courtroom.)

16 INDIVIDUAL VOIR DIRE BY THE COURT:

17 Q. State your name, please, ma'am.

18 A. Shaunda Kirkwood.

19 Q. Ms. Kirkwood, have you heard anything about this
20 case.

21 A. You mean?

22 Q. Street talk, gossip, anything like that?

23 A. Yes.

24 Q. Okay. How about media coverage? Did you read
25 about it or hear about it on the radio or television?

26 A. Newspaper and stuff, uh-huh.

27 Q. Did you know any of the victims or their families?

28 A. No.

29 Q. Do you know Mr. Flowers?

Individual Voir Dire - JURY OUT

1 A. Not personally, no.

2 Q. You know of him?

3 A. Yes, sir.

4 Q. Do you know any of his family?

5 A. Yes, sir.

6 Q. Who do you know?

7 A. Well, his sister. I work with his sister, Sherita

8 Baskin.

9 Q. All right, what is her name?

10 A. Sherita Baskin.

11 Q. Sherita Baskin, all right. And where was that that
12 you worked with her?

13 A. Up at Morganite.

14 Q. I'm sorry?

15 A. Morganite. Used to be Multicraft.

16 Q. Oh, yeah, okay. How long ago was that?

17 A. We still, still there.

18 Q. Okay. So you still work with her?

19 A. Uh-hum.

20 Q. Has she ever discussed this matter with you or in
21 your presence?

22 A. No.

23 Q. Is the -- you said the other things you have heard
24 were just like community talk, street talk, or gossip? Is
25 that correct?

26 A. Uh-huh.

27 Q. Based on what you have heard and the fact that you,
28 and also consider that you work with his sister, is there
29 anything about all that that would affect you? Well, let me

Individual Voir Dire - JURY OUT

1 go back. Based on that, have you formed an opinion as to the
2 guilt or innocence of Mr. Flowers?

3 A. Yes.

4 Q. Would that opinion keep you from being fair and
5 impartial juror in this case?

6 A. Well, sort of because I have really got my mind
7 made up.

8 Q. Okay. And it would take sworn testimony to
9 overcome that; is that correct?

10 A. Yes.

11 Q. Okay.

12 **BY THE COURT:** Mr. Evans?

13 **BY MR. EVANS:** No questions, Your Honor.

14 **BY MR. DE GRUY:** Yes, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

16 Q. Ms. Kirkwood, if you were chosen as a juror, would
17 you be able to listen to the evidence and then weigh that
18 evidence and set your personal, or the opinion you have
19 already formed, set that aside and make a decision based just
20 on what you hear in court?

21 A. Yes.

22 **BY MR. DE GRUY:** That's all I have.

23 **BY THE COURT:** Okay. Let me ask you a further
24 question, Ms. Kirkwood.

25 FURTHER VOIR DIRE BY THE COURT:

26 Q. As we explained to you, this trial could end up
27 being two phases. In the first phase the only thing the jury
28 could consider would be guilt or innocence. Do you
29 understand that?

Individual Voir Dire - JURY OUT

1 A. Yes.

2 Q. No penalty phase there at all. Do you understand
3 that?

4 A. Yes.

5 Q. If the jury found the Defendant guilty, then we
— 6 would go to the second phase. If that second phase each side
7 would put on additional evidence. The State would put on
8 evidence of aggravating circumstances, which would be
9 circumstances that would tend to warrant the death penalty.
10 The Defendant would put on evidence of mitigating
11 circumstances which could be anything concerning the
12 Defendant's life, which would be factors to weigh against the
13 death penalty. Do you understand that?

14 A. Yes.

15 Q. I would give the jury an instruction that contained
16 all those factors, and it would tell them how they go about
17 evaluating that and what they had to do to reach a verdict.
18 Do you understand that?

19 A. Yes.

20 Q. Okay. If at that point in time I told you that the
21 law authorized the imposition of the death penalty and you
22 found that the evidence warranted it, the imposition of the
23 death penalty, could you impose the death penalty?

24 A. Imposing? Go against it?

25 Q. No, could you vote for it?

26 A. Um, no.

27 Q. Okay.

28 BY THE COURT: Now Mr. Evans.

29 BY MR. EVANS: Thank you, Your Honor.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY MR. EVANS:

Q. Ms. Kirkwood, I want to cover both of those issues. You say that you do know the Defendant, but you are not friends with him. You just know who he is; is that right?

A. Yes, sir.

Q. And you are friends with his sister and still work with her; is that correct?

A. Yes, sir.

Q. Now what the Judge was asking while ago, don't you think the fact that you are friends with his sister and work with her would influence your decision in this case if you were picked as a juror?

A. No.

Q. Don't you think that would make it difficult for you as a juror?

A. Well, like I say, I really got my mind made up so.

Q. Okay, and I'm going to get to that. But that is kind of what I'm getting to. The fact that your mind is made up, you already know how you would vote on this case, don't you?

A. Yes.

Q. And nothing that we say is going to change that, is it?

A. No.

Q. Because you already know how you are going to vote?

A. Yes.

Q. And in addition to that, what the Judge has covered with you, you have a problem, personal problem with the death penalty also?

Individual Voir Dire - JURY OUT

1 A. Yes.

2 Q. And because of that problem that you have with the
3 death penalty, even if the law authorized it in this case and
4 you found that the facts justified it, you yourself could not
5 vote for the death penalty, could you?

6 A. No.

7 BY MR. EVANS: Nothing further, Your Honor.

8 FURTHER VOIR DIRE BY MR. DE GRUY:

9 Q. Just a couple of questions, Ms. Kirkwood. Now we
10 don't want you to answer the questions one way for me and one
11 way for Mr. Evans. I'm a little confused. Are you telling
12 us that you could, that because you formed an opinion, you
13 could not set that opinion aside and consider the evidence?

14 A. Yes, I probably could. Yes.

15 Q. And that's what you said to me about the first
16 phase of the trial to determine guilt or innocence. Are you
17 saying that you could set your opinion aside and base a
18 decision, base a verdict at the end of the trial on what you
19 hear in this courtroom?

20 A. No, not really because I already got my mind made
21 up.

22 Q. Okay. So you are saying your mind is made up?

23 A. Yes.

24 Q. And nothing can change?

25 A. Yes.

26 Q. Okay, thank you.

27 BY MR. DE GRUY: That's all I have.

28 BY THE COURT: You may step down.

29 (Juror 4, Ms. Kirkwood, leaves the courtroom.)

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Okay, I'm going to strike her for
2 cause. Any objection?

3 **BY MR. EVANS:** No, sir.

4 **BY MR. DE GRUY:** No objection.

5 **BY THE COURT:** All right.

6 (JUROR NO. 5, MR. JAMES E. STUVEE, enters the
7 courtroom.)

8 INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. State your name, please, sir.

10 A. James E. Stuvee.

11 Q. Mr. Stuvee, have you heard about this case?

12 A. Yes, sir.

13 Q. How did you hear that?

14 A. Well, just live in the county. You are going to
15 hear things over the last couple of years. That's all.

16 Q. I assume then you have heard some media coverage -
17 television, radio, and newspaper?

18 A. No, I really don't get any local stations other
19 than Columbus or Tupelo.

20 Q. Okay. Every now and then, it has been on Tupelo.
21 Did you ever hear any of that on Tupelo?

22 A. It is possible. It has been so long ago; I really
23 don't know.

24 Q. All right. I assume some of the talk you have
25 heard has been community talk; is that correct, or gossip?

26 A. That sort of stuff, right.

27 Q. All right. Did you know any of the victims in this
28 case?

29 A. No, I did not.

Individual Voir Dire - JURY OUT

1 Q. Did you know any of their families, or do you know
2 any of their families?

3 A. No.

4 Q. Do you know Mr. Flowers?

5 A. No, I do not.

6 Q. Do you know any of his family?

7 A. No, I do not.

8 Q. All right. Mr. Stuvee, where do you live in the
9 county?

10 A. Duck Hill area.

11 Q. Okay.

12 A. Just outside of town, a rural area.

13 Q. Have you formed any opinion based on what you have
14 heard or read as to the guilt or innocence of Mr. Flowers?

15 A. No, I haven't formed an opinion.

16 Q. If you were seated as a juror, could you listen to
17 the evidence that comes from the witness stand, take my law
18 at the end of the case and apply it to the facts, then
19 discuss it with your fellow jurors, and render a decision
20 based on that rather than what you might have heard or read?

21 A. Yes, sir.

22 Q. Do you know of any reason that you could not be a
23 fair and impartial juror in this case?

24 A. Not that I'm aware of.

25 Q. Mr. Stuvee, in response to my question while ago
26 when I asked people if they had any religious or
27 philosophical or personal belief in opposition to the death
28 penalty, you did not raise your hand. Is that correct?

29 A. That's correct.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** All right, Mr. Evans.

2 **BY MR. EVANS:** Thank you, Your Honor.

3 INDIVIDUAL VOIR DIRE BY MR. EVANS:

4 Q. Good morning, Mr. Stuvee.

5 A. Morning.

6 Q. Going to a little bit more detail than what the
7 Judge did, at this phase in any criminal trial the defendant,
8 this Defendant or any defendant is presumed by law to be
9 innocent. And that is the way it should be because the
10 burden of proof is on the State of Mississippi to prove to
11 the jury that he is, in fact, guilty. Now at this phase in
12 the trial can you accept that theory that at this point he is
13 presumed innocent because no proof has been put on?

14 A. Yes, sir.

15 Q. Okay. To follow up on that, once the State of
16 Mississippi has proven to the jury beyond a reasonable doubt
17 that he is guilty, then that presumption is no longer there
18 to protect him. But the entire burden of proof is on the
19 State. The defendant doesn't have to prove anything. Do you
20 understand that?

21 A. Yes, sir.

22 Q. Okay. Once we get -- well, let me take it like
23 this. As the Judge has told you, this is a capital murder
24 trial. It may be two phases to this trial. The first phase
25 deals only with guilt. The jury isn't even to consider what
26 the proper penalty should be at that point because they are
27 not, that isn't before them yet. Can you tell us that on the
28 first phase, the only thing that you would look at would be
29 whether or not he is guilty, and you would base that on the

Individual Voir Dire - JURY OUT

1 evidence and the law that the Judge gives you?

2 A. Yes.

3 Q. If we go into the second phase, the way that that
4 would work, the State of Mississippi through the DA's office
5 would put on evidence that is called aggravating
6 circumstances. That would be factors that we will be
7 presenting to the jury to try to show the jury that the
8 penalty should be death. The Defense, on the other hand,
9 will put on what is called mitigating circumstances. That is
10 circumstances that they will be using to try to show the jury
11 that in this particular case the penalty should be life
12 instead of death. And those circumstances don't have
13 anything to do or don't have to have anything to do with the
14 case. They may be things like anything in his past history,
15 school record, age, anything that they want to bring before
16 the Court's attention. The Judge will tell the jury what
17 factors to consider and how to consider the factors, step by
18 step how to go through the process. Can you tell us that if
19 you are picked as a juror, in that phase that you will not
20 consider either penalty, life or death, until after you have
21 heard all of the evidence from both sides and heard the
22 Court's instructions?

23 A. Yes, I could.

24 Q. In other words, you would not lean toward life; you
25 would not lean toward death. You would follow the Court's
26 instructions, look at the evidence, and base any decision on
27 what comes out in court?

28 A. I think I can make up my own mind.

29 **BY MR. EVANS:** Nothing further, Your Honor.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

Q. Good morning, Mr. Stuvee.

A. Good morning, sir.

Q. Now you understand at the point we are right now, we are just trying to get your opinion. We are not -- we know you haven't heard any evidence, and it's really in a way unfair to be asking questions like this. But you said you have no philosophical opposition to the death penalty. I would like to know how strongly you support the death penalty, and so if you could just maybe tell us--

A. -- I don't guess I really, really ever had to make a decision in that area, so I really couldn't say. I would have to -- I guess find out how big of a crime it was to really form an opinion.

Q. Right, and the Judge has already told you this morning the charge is capital murder, which is the only offense that is death penalty eligible.

A. Okay.

Q. And that is the killing during the commission of a robbery.

A. Okay.

Q. So just every murder the death penalty is not even an option. So the killing during the commission of a robbery and as the Judge told you, the allegation from the State in this case is four people were killed during--

A. Correct.

Q. With that, with those facts, is that the situation where you would say the death penalty is really the only appropriate punishment?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Your Honor, that is not the right
2 form of the question.

3 **BY MR. DE GRUY:** It is the form of the question
4 because I am trying to get information.

5 **BY THE COURT:** Okay, once again, let me put it to
6 him the way Witherspoon says put it to him, and then
7 you can follow up on that.

8 FURTHER VOIR DIRE BY THE COURT:

9 Q. Mr. Stuvee, the death penalty obviously doesn't
10 come into play until such time as the jury at the first phase
11 of the trial has found the defendant guilty. You understand
12 that, of course?

13 A. Correct.

14 Q. At that second stage, each side will put on
15 additional evidence. The State must put on evidence of what
16 is called aggravating circumstances, which are evidence of
17 factors that would weigh toward the imposition of the death
18 penalty. At that time I expect the Defendant will also put
19 on some evidence of mitigating circumstances which can
20 include almost anything -- parts of his life from his
21 childhood. There are a lot of things that would go, that
22 would be put on for the purpose of saying you shouldn't give
23 the death penalty. Those will be presented to the jury. I
24 will give an instruction at the end of that phase of the
25 trial which includes those aggravating and mitigating
26 circumstances. That instruction would also have directions
27 as to how you should consider those and apply those pieces of
28 evidence in reaching your verdict on the sentencing phase.

29 And then that at that time the jury must make the

Individual Voir Dire - JURY OUT

1 decision as to whether or not it's life or death. At that
2 time when it comes to be the jury's time to make that
3 decision, will you consider all of those factors that are
4 going to be in that instruction and that you have heard from
5 the witness stand?

6 A. Yes, sir.

7 Q. Aggravating and mitigating circumstances.

8 A. I could consider everything.

9 Q. Would you automatically disregard a life penalty,
10 the life penalty as an option in this matter and
11 automatically impose the death penalty just because of the,
12 you had found him guilty?

13 A. No.

14 Q. You would consider those other factors?

15 A. Yes, sir.

16 **BY THE COURT:** Okay. Now Mr. de Gruy.

17 FURTHER VOIR DIRE BY MR. DE GRUY:

18 Q. Okay, and I think I understand. You would consider
19 these things and when we say consider, we mean
20 conscientiously think about it, weigh it, follow the process,
21 and I think that's what you are saying?

22 A. Correct.

23 Q. And so my question is just thinking in the
24 abstract, not about this case in particular, the situation of
25 someone that you believe beyond a reasonable doubt is guilty
26 of killing several people during a robbery, would you be
27 leaning towards the death penalty in that case? Is that the
28 kind of case you would say, unless you show me something
29 different, that person should get the death penalty?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Your Honor, again I object. He is
2 trying to get him to commit on facts that aren't
3 proper.

4 **BY THE COURT:** Well, I don't think that presents
5 the scenario he will be presented with because you are
6 going to present some mitigating factors in all
7 likelihood.

8 **BY THE JUROR:** Do I need to answer now?

9 BY MR. DE GRUY:

10 Q. My question, Mr. Stuvee, in just in your opinion,
11 and you are the only one that knows how you feel, and I
12 realize that you haven't given this much thought before. But
13 in just, if you think about times where you have picked up
14 the *Clarion Ledger* and read about a crime, would you be
15 leaning -- and you may not be, and that's all I'm trying to
16 do is find out. Would you be leaning one way or the other?
17 Say this crime, based on these facts, knowing the person is
18 guilty, your gut instinct, knee jerk reaction is that this
19 person should get the death penalty?

20 A. I haven't made up my mind. I don't see where it
21 would really, really be determined until after I have seen
22 all the evidence and facts and everything else that you want
23 to present to me.

24 Q. Okay, and that's all I'm trying -- so you would
25 start that second phase just like you start the first phase,
26 with a blank slate?

27 A. I wouldn't consider one as a part of the other.
28 They are totally different.

29 **BY MR. DE GRUY:** Okay, that's all I have.

Individual Voir Dire - JURY OUT

1 **BY MR. CARTER:** One moment, Your Honor.

2 (Defense Counsel confer.)

3 **BY MR. DE GRUY:** That's all I have.

4 **BY THE COURT:** You may step down.

5 **BY THE JUROR:** Thank you.

6 (Juror 5, Mr. Stuvee, leaves the courtroom.)

7 **BY THE COURT:** Any objection for cause?

8 **BY MR. EVANS:** No, sir.

9 **BY MR. DE GRUY:** No, Your Honor.

10 **BY THE COURT:** Okay, he goes to the room. Number
11 6, Mr. Hearn.

12 (JUROR NO. 6, MR. JESSIE J. HEARN, enters the
13 courtroom.)

14 INDIVIDUAL VOIR DIRE BY THE COURT:

15 Q. State your name, please, sir.

16 A. My name is Jessie Hearn.

17 Q. Mr. Hearn, what part of the county do you live in?

18 A. I'm hard of--

19 Q. What part of the county do you live in?

20 A. Oh, Montgomery County. Right out of the city
21 limits.

22 Q. Okay. Have you ever heard anything about this
23 case?

24 A. I have.

25 Q. Okay. Did you read about it in the newspaper or
26 hear about it on the radio?

27 A. I heard about it on the radio. I never did read
28 the newspaper.

29 Q. What about television? You ever hear any of that?

Individual Voir Dire - JURY OUT

1 A. I heard little sketches on television.

2 Q. Okay. Have you heard any street talk or gossip
3 about it?

4 A. I really haven't.

5 Q. You haven't heard anybody in the community talking
6 about it?

7 A. (Juror shakes his head.)

8 Q. You have got to speak up, sir. She is--

9 A. -- I haven't. I haven't heard nobody say nothing
10 about it.

11 Q. Did you know any of the victims in this case?

12 A. I know his mother and dad.

13 Q. No, I'm talking about victims, the people that died
14 in this case -- Mr. Golden and Ms. Tardy and Ms. Rigby--

15 A. I know, I think I know several. Ms. Tardy and
16 Mr. Golden, I think they are the only two I really knew.

17 Q. Do you know any of their families?

18 A. Uh, Mr. Golden got a brother named Willie George if
19 my memory serve me. Willie George Golden.

20 Q. Okay.

21 A. And I think Ms. Tardy's daddy's name was Cecil
22 Bennett. I think I'm right.

23 Q. Okay. Have any of those people ever talked to you
24 about this case?

25 A. They haven't.

26 Q. Do you know Mr. Flowers?

27 A. Talking about?

28 Q. Yes, sir. That gentleman right there.

29 A. I seen him, but I really don't know him because

Individual Voir Dire - JURY OUT

1 when he was born, I was probably working out of town, and I
2 wasn't around him. I really wasn't around him.

3 Q. Okay. How about his family. Do you know?

4 A. I know his mother and daddy real well.

5 Q. Okay. Would you say you are good friends with
6 them?

7 A. Well, not really but I know them well. I respect
8 them, think a lot of them. We are just not what you call
9 real good friends, but, you know, I think -- like I say, I
10 think a lot of them, and I sees them, and I know them. And
11 we are just not what you call personal friends.

12 Q. Have you ever discussed this matter with them or
13 had them discuss it in your presence?

14 A. I haven't.

15 Q. Mr. Hearn, based on what you have heard about this
16 case or what you know about this case, however you got that
17 knowledge, and based on your relationship with Mr. and
18 Ms. Flowers, have you formed an opinion in this case as to
19 the guilt or innocence of Mr. Flowers?

20 A. Well, my opinion would be--

21 Q. -- You don't have to tell me what it is.

22 A. Oh, okay.

23 Q. I just need to know if you have one.

24 A. Do I have one?

25 Q. Uh-hum.

26 A. I think I do.

27 Q. Okay. Would that opinion keep you from being a
28 fair and impartial juror in this case?

29 A. It would not.

Individual Voir Dire - JURY OUT

1 Q. Mr. Hearn, could you sit as a juror over there and
2 listen to the evidence that comes from the witness stand and
3 take my instructions on the law at the end of the case, apply
4 them to the facts as you see them, discuss all that with your
5 fellow jurors, and make your decision based on that to the
6 exclusion of what you heard and to your friendship or
7 relationship with the Flowers?

8 A. Partially I think I could.

9 Q. I'm sorry?

10 A. I think I could.

11 Q. Okay. Mr. Hearn, I asked earlier about people that
12 had a religious or philosophical belief or personal belief in
13 opposition to the death penalty. And you said, you indicated
14 that you did not; is that correct?

15 A. That's right.

16 Q. Okay.

17 BY THE COURT: Mr. Evans.

18 BY MR. EVANS: Thank you, Your Honor.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. Good morning, Mr. Hearn.

21 A. Morning.

22 Q. A few things I would like to go into with you. To
23 start with, you say that you are friends with his mother and
24 his father. You respect them. You think a lot of them.
25 Wouldn't that cause you some difficulty in trying to sit in
26 judgment of him if you were picked as a juror on this case?

27 A. It would not.

28 Q. And you say you have already reached an opinion in
29 this case?

Individual Voir Dire - JURY OUT

1 A. (Juror nods his head.)

2 Q. Now before the Judge stopped you, I think you even
3 went so far as to say that opinion was that he is innocent;
4 is that right?

5 A. I'm a little hard of hearing in my right ear. I
6 didn't quite understand you.

7 Q. What is your opinion?

8 A. Say what would be my opinion? Not guilty.

9 Q. Okay. And is that opinion based upon the fact that
10 you are good friends with his mother and father and what you
11 have heard?

12 A. That wouldn't have anything to do with them being,
13 you know, because I know the mother and father real well.
14 That wouldn't have anything to do with that.

15 Q. All right, well, what does have something to do
16 with your opinion?

17 A. Well, I would say that he was raised by a good
18 mother and a good father. They have good relation with God,
19 and they are church attenders, and they did their very best
20 to bring him up in the right way.

21 Q. Okay. Would all of this enter into your mind if
22 you were on the jury?

23 A. I would not.

24 Q. You would not what?

25 A. I didn't quite understand. Like I say, I'm hard of
26 hearing.

27 Q. What I'm trying to get to, what we are trying to
28 do, Mr. Hearn, is get a jury that hasn't already made up its
29 mind, a jury that can be fair and impartial to both sides,

Individual Voir Dire - JURY OUT

1 both to the Defendant and to the State of Mississippi; that
2 doesn't have outside influences, doesn't have outside
3 friendships, can come in here as has been said earlier with a
4 clean slate, not have anything to influence their decision;
5 listen to the evidence and decide the case on that. And you
6 have already told us that you already have an opinion that he
7 is innocent. You have told us what that is based on. Now
8 don't you feel that all of that would be going through your
9 mind if you were sitting up here as a juror and he was on
10 trial?

11 A. I think it would.

12 Q. And that's what I'm trying to get to. And nobody
13 is judging you or any other juror. What we are looking at,
14 we are trying to find a juror that wouldn't be influenced by
15 outside factors because there are some, there is going to be
16 some jurors that are going to be influenced because of
17 friendships with his family. There is going to be some
18 jurors who are going to be influenced by friendships with
19 victims' families, and our goal is to try to find a juror
20 that is not influenced by anything but can just listen to the
21 evidence and not already have their mind made up. So don't
22 you think the fact that you think so much of his parents,
23 that you respect them, that it would cause you a problem
24 being a fair and impartial juror on this particular case?

25 A. It wouldn't keep me from being impartial and fair.

26 Q. How could you be fair if you have already decided--

27 BY MR. DE GRUY: -- Your Honor, he has answered
28 the question. He has answered it from the Court, and
29 he has answered it from Mr. Evans.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** He has answered it.

2 **BY MR. DE GRUY:** The presumption of innocence is
3 the law. Everyone has to have that.

4 BY MR. EVANS:

5 Q. What would it take to change your mind? You say
6 you have already decided that he is innocent. What would it
7 take to change your mind? Would the State -- what would the
8 State have to do to change your mind?

9 A. (Pause) Basically probably not anything.

10 Q. So nothing we could do would change your mind,
11 would it?

12 A. Well, I would do my best to be partial and fair.

13 Q. But nothing we could do would change your opinion,
14 would it?

15 **BY MR. CARTER:** I object. I think he just said
16 he would be fair.

17 **BY MR. EVANS:** He said it wouldn't change his
18 opinion.

19 **BY THE COURT:** Well, I'm going to let him answer
20 that question. Go ahead.

21 BY MR. EVANS:

22 Q. Nothing that we did would change your opinion of
23 whether the Defendant was innocent, would it?

24 A. I'm not saying it wouldn't but... (Long pause.)

25 Q. At the end of the trial, you are going to have the
26 same opinion already that you do now, aren't you?

27 **BY MR. DE GRUY:** Your Honor, he hasn't heard any
28 evidence.

29 **BY THE COURT:** Let me ask one question. It may

Individual Voir Dire - JURY OUT

1 solve this.

2 FURTHER VOIR DIRE BY THE COURT:

3 Q. Mr. Hearn, if the State put on testimony that in
4 your mind proved his guilt beyond a reasonable doubt, could
5 you vote guilty?

6 A. Well, if I was elected with the majority of the
7 jury, I would have to. Well, we all would have to go the
8 same way.

9 Q. Well, I need you to tell me "yes" or "no." Would
10 you do that?

11 A. I would say no.

12 Q. You are telling me that if they proved his guilt
13 beyond a reasonable doubt, you still could not vote for him
14 guilty?

15 A. You said they proved that he was guilty or not?

16 Q. The State is required -- he is presumed innocent
17 until such time as the State proves its case, and their
18 burden is that they must prove that case beyond a reasonable
19 doubt. My question to you is if, in fact, they prove that to
20 you where you decide that they have proved it beyond a
21 reasonable doubt, could you vote to convict him?

22 A. That he is guilty?

23 Q. Yes.

24 A. I would have to vote yes.

25 Q. So you could?

26 A. I could.

27 Q. Okay.

28 **BY MR. EVANS:** I just want to make sure I
29 understand.

Individual Voir Dire - JURY OUT

FURTHER VOIR DIRE BY MR. EVANS:

Q. The answer to the Judge's question, you could vote guilty in that circumstance?

BY THE COURT: I believe he has answered it.

BY MR. EVANS: Well, Your Honor, may I -- if the Court will allow because I'm not sure that he answered it the same way the Court understood. I would just like to ask him one more time.

BY MR. EVANS:

Q. Are you saying under those circumstances you could vote guilty on this Defendant?

A. I could.

Q. All right. Now I want to address the death penalty issue. You are saying that you do not have any beliefs against the death penalty; is that correct?

A. That's right.

Q. All right. On this case--

BY MR. DE GRUY: --Your Honor, I don't think it is proper to ask on this case.

BY MR. EVANS: I haven't asked my question yet.

BY THE COURT: Well, let's make it in general.

BY MR. EVANS: Well, no. May I ask the question before the Court rules because I think--

BY THE COURT: -- I haven't ruled. I am just directing you to ask it in the proper form.

BY MR. EVANS: Well, I would like to ask it, but I think it is proper. If the Court says it's not, I won't.

BY THE COURT: Okay.

Individual Voir Dire - JURY OUT

1 BY MR. EVANS:

2 Q. On this case because of your friendships and your
3 respect for his family, would that enter into your decision
4 to where you would automatically not give him the death
5 penalty in this particular case if the jury convicted him?
6 And let the Court rule.

7 BY THE COURT: Well, you need to add the rest of
8 that.

9 BY MR. EVANS: All right.

10 BY THE COURT: If I authorize it and the facts--
11 BY MR. EVANS:

12 Q. If the Judge says that the death penalty is
13 authorized in this case and if the facts justify it, because
14 of your respect for his family, would that cause you to
15 automatically vote against the death penalty and
16 automatically say, well, we are going to have to give him
17 life; I can't vote for death?

18 A. Without any reasonable doubt, it wouldn't.

19 Q. I didn't understand you.

20 A. I said without any reasonable doubt, it would not.

21 Q. It wouldn't affect you? You could vote for the
22 death penalty?

23 A. (Juror nods his head.)

24 Q. You need to answer.

25 A. I would still have the same respect towards the
26 family that I does now.

27 Q. Well, that's what I'm getting at. Would that cause
28 you to automatically vote for life and against the death
29 penalty if the facts justified the death penalty and the law

Individual Voir Dire - JURY OUT

1 authorized it? Would that fact, your feelings toward the
2 family, would that cause you to automatically say, I'm not
3 going to vote for the death penalty; I have got to vote for
4 life?

5 A. I could still have the same relation with the
6 family.

7 Q. You are not answering my question. If you would,
8 please answer my question, Mr. Hearn. Would that cause you
9 to automatically vote against the death penalty?

10 A. It probably would.

11 Q. Thank you.

12 BY MR. DE GRUY: I have no questions.

13 BY THE COURT: Well, I have got one.

14 FURTHER VOIR DIRE BY THE COURT:

15 Q. If we got to the phase where there was a sentencing
16 phase where the question, the only question then would be --
17 by that time the jury would have convicted him, or we
18 wouldn't even have a sentencing phase. If we get to the
19 sentencing phase, there are only going to be two options.
20 They are going to be life and death. That would be the two
21 sentences. At that time both sides are going to put on some
22 evidence. The State is going to put on evidence of
23 aggravating circumstances which would be evidence to tend to
24 warrant the death penalty. The Defendant is probably going
25 to put on mitigating factors which might include his mama and
26 daddy testifying or other people that have known him and that
27 would be factors that would tend to say do not impose the
28 death penalty; instead impose life. Do you understand that
29 that is the way that would work, Mr. Hearn?

Individual Voir Dire - JURY OUT

1 A. That's right.

2 Q. Okay. I would give the jury a written instruction
3 that would include those factors, and it would also tell the
4 jury how to evaluate them and arrive at a verdict. Okay.
5 Would you follow, would you listen to that evidence and
6 follow the instructions that I gave you?

7 A. I would.

8 Q. Okay. At that time would you base your decision on
9 what you had heard as far as those factors go and what the
10 instructions were I gave you and not automatically do either
11 one, life or death, but make your decision on what you heard
12 from up in court?

13 A. I could make a decision.

14 Q. Okay.

15 BY THE COURT: Anything else?

16 BY MR. EVANS: Your Honor, all he has answered
17 was that he could make a decision. I think that is
18 still consistent with what he said before.

19 BY THE COURT: Thank you, Mr. Hearn. You may
20 step down.

21 (Juror 6, Mr. Hearn, leaves the courtroom.)

22 BY THE COURT: Okay.

23 BY MR. EVANS: The State would move for cause for
24 several reasons. One, he specifically said he already
25 has an opinion that he is guilty and that nothing the
26 State--

27 BY THE COURT: -- no, not guilty.

28 BY MR. EVANS: I mean not guilty and that nothing
29 the State could put on would change that opinion. He

Individual Voir Dire - JURY OUT

1 has also said that he would automatically, if it got
2 to the second phase, vote against the death penalty
3 because of his respect and friendships with the
4 family. And of course, his several other comments,
5 but that is I think the two most specific ones that
6 would keep from him from being a fair and impartial
7 juror.

8 **BY THE COURT:** Well.

9 **BY MR. EVANS:** Obviously he is biased against the
10 State because of all these reasons that he has said.

11 **BY THE COURT:** As pointed out by Mr. de Gruy, he
12 is required to presume that he is innocent until such
13 time as you prove something beyond a reasonable doubt.
14 So I don't -- that does not disqualify him. I think
15 he answered it enough where I'm not going to
16 disqualify him for cause. That motion is overruled.

17 All right. He goes to the room. Jerry Crowder.

18 **BY MR. EVANS:** Your Honor, does the automatic
19 part not apply to both sides?

20 **BY THE COURT:** I have ruled. Move on.

21 (JUROR NO. 8, MR. JERRY M. CROWDER, enters the
22 courtroom.)

23 **INDIVIDUAL VOIR DIRE BY THE COURT:**

24 Q. State your name, please, sir.

25 A. Jerry Crowder.

26 Q. Mr. Crowder, have you ever heard anything about
27 this case?

28 A. Yes, sir.

29 Q. How did you hear it?

Individual Voir Dire - JURY OUT

1 A. Well, just people talking, you know; then from
2 previous trials.

3 Q. Okay. You knew about the previous trials?

4 A. Uh-hum.

5 Q. Did you know the outcome of them?

6 A. Yeah.

7 Q. Have you ever talked to any members of the victims'
8 family or had them talk about this in your presence?

9 A. No. I can't say I have.

10 Q. Do you know any of them?

11 A. Yes, sir.

12 Q. Who do you know?

13 A. Benny Rigby.

14 Q. Okay. Did you know any of the victims themselves?

15 A. No.

16 Q. Do you know Mr. Flowers?

17 A. No.

18 Q. Do you know any of his family?

19 A. No.

20 Q. Based on what you have heard, have you formed an
21 opinion as to the guilt or innocence of Mr. Flowers?

22 A. Yes, sir. I have got my opinion.

23 Q. Okay. Would that opinion keep you from being a
24 fair and impartial juror?

25 A. It would.

26 BY THE COURT: Mr. Evans?

27 BY MR. EVANS: No questions.

28 BY THE COURT: Mr. de Gruy?

29 BY MR. DE GRUY: No, Your Honor.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** You may step down.

2 (Juror 8, Mr. Crowder, leaves the courtroom.)

3 **BY THE COURT:** Okay, I'm going to excuse him for
4 cause. Any objection?

5 **BY MR. CARTER:** No objection.

6 **BY MR. EVANS:** No, sir.

7 **BY THE COURT:** Brenda Allen.

8 (JUROR NO. 9, MS. BRENDA JOYCE ALLEN, enters the
9 courtroom.)

10 INDIVIDUAL VOIR DIRE BY THE COURT:

11 Q. State your name, Ms. Allen.

12 A. Brenda Joyce Allen.

13 Q. Ms. Allen, have you ever heard anything about this
14 case?

15 A. No, sir.

16 Q. You haven't even heard any street talk or gossip?

17 A. Yeah, street talk, yeah.

18 Q. Okay. Do you remember when it happened?

19 A. No, sir.

20 Q. Okay. How long have you lived here?

21 A. All my life.

22 Q. Okay. Have you ever seen any newspaper coverage or
23 radio or television coverage of this?

24 A. Just television.

25 Q. Do you know, did you know any of the victims?

26 A. No, sir.

27 Q. Do you know any of their family?

28 A. No, sir.

29 Q. Do you know Mr. Flowers?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Do you know any of his family?

3 A. No.

4 Q. Based on what you have heard, Ms. Allen, have you
5 formed an opinion as to the guilt or innocence of Mr.
6 Flowers?

7 A. No, sir.

8 Q. Okay. Could you sit as a juror and listen to the
9 evidence that comes from the witness stand, take my
10 instructions on the law at the end of the trial, and discuss
11 that with fellow jurors, and then make a decision based on
12 that and to the exclusion of what you have already heard
13 about the case?

14 A. Yes, sir.

15 Q. Do you think, do you know of any reason you could
16 not be fair and impartial?

17 A. No, sir.

18 Q. Okay. Ms. Allen, I asked the jurors while ago if
19 they had any religious, personal or philosophical beliefs
20 that would prohibit them from imposing the death penalty, and
21 you did not answer. Am I correct in saying that you do not
22 have such a belief?

23 A. I don't believe in the death sentence.

24 Q. You do not believe in it?

25 A. No, sir.

26 Q. Okay. Let me put it to you this way then, ma'am.
27 The only way that the death penalty comes into play is after
28 the jury has rendered a verdict of conviction against the
29 defendant. Then it would go to the second phase of the

Individual Voir Dire - JURY OUT

1 trial, and at that second phase of the trial, the State would
2 put on aggravating circumstances, evidence of aggravating
3 circumstances which would tend to warrant the death penalty.
4 The Defendant would put on mitigating circumstances that
5 would be a lot of different circumstances about Mr. Flowers
6 and his life and his family and things like that that would
7 tend to say he shouldn't get the death penalty. At the end
8 of that, I would give a written instruction that contained
9 all those things and told the jury how they should go about
10 applying those factors and reaching a decision. Do you
11 understand that that is how it would work?

12 A. Yes, sir.

13 Q. Okay. At the end -- and then the jury would have
14 to decide based on those things as to whether or not to
15 impose death or life. If during that phase of the trial I
16 told you that the law authorized it, the imposition of the
17 death penalty, and you yourself found that the evidence
18 warranted it, could you impose the death penalty?

19 A. No, sir.

20 Q. Okay.

21 **BY THE COURT:** Mr. Evans.

22 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

23 Q. How are you doing, Ms. Allen?

24 A. Fine.

25 Q. Ms. Allen, there are a couple of things I want to
26 go over with you. You say you do not know the Defendant?

27 A. No, sir.

28 Q. Do you know any of his family?

29 A. I have heard of them. I don't know them

Individual Voir Dire - JURY OUT

1 personally.

2 Q. Do you know his father, Archie Flowers, that works
3 at Wal-Mart?

4 A. No, sir.

5 Q. How about his mother, Lola Flowers?

6 A. No, sir.

7 Q. Do you know any of his relatives? Any of the
8 Campbells or the Forrests that are related to them?

9 A. I know some of them, but I don't know them
10 personally.

11 Q. Okay. Is there anything that you know or any
12 family members that you know that are related to him that
13 would cause you any influence one way or the other in this
14 case?

15 A. No, sir.

16 Q. Do you have an opinion at this time as to the guilt
17 or innocence of the Defendant?

18 A. No, sir.

19 Q. And the reason I ask you that. What we are
20 attempting to do, we are attempting to get a jury that has no
21 outside influences, that will listen to the evidence in the
22 case and base a decision of guilt or innocence strictly on
23 the evidence that comes out in the courtroom. Can you tell
24 us that if you were picked as a juror, that you could do
25 that? Now I'm talking about just on the guilt or innocence
26 at this part?

27 A. Yeah.

28 Q. You could do that on that phase of the trial?

29 A. What was the question?

Individual Voir Dire - JURY OUT

1 Q. Could you decide guilt or innocence based on just
2 the evidence that comes out in the courtroom and no outside
3 influences?

4 A. I don't know.

5 Q. You don't know?

6 A. Uh-uh.

7 Q. What would be, what would influence you?

8 A. (Juror shakes her head.) Nothing.

9 Q. And I want to make sure I understand. Are you
10 telling us that there is some reason that you don't feel you
11 could be fair and impartial on this particular case?

12 A. No, sir. I don't know nothing about it.

13 Q. All right, let me ask you this because I want to
14 make sure that I understand the answer. Could you be fair
15 and impartial on this case and base a decision on the
16 evidence in the case?

17 A. Yeah.

18 Q. Okay. Is there any reason that you know of that
19 you could not be fair and impartial in this case?

20 A. No.

21 Q. Okay. Now let's go on to the death penalty part of
22 it. As the Judge has told you, this is a capital murder
23 case. If the jury convicts the Defendant, then we go into a
24 second phase. In that phase the jury must decide which
25 penalty is appropriate, either the death penalty or life.
26 The way that will work, the State will put on evidence that
27 is called aggravating factors in an attempt to show the jury
28 that the proper penalty should be the death penalty. The
29 Defense will put on mitigating factors in an attempt to show

Individual Voir Dire - JURY OUT

1 that the proper penalty should be life. The Judge will give
2 the jury instructions on step by step what to do. The Judge
3 in his instructions may tell the jury that the death penalty
4 is authorized in this case. If the Judge tells the jury that
5 the death penalty is authorized in this case and if you find
6 that the facts justify it, could you vote for the death
7 penalty?

8 A. No, sir.

9 Q. So your belief is so strong against the death
10 penalty that you could not vote for it even if the law
11 authorized it and the facts justified it?

12 A. Yes, sir.

13 BY MR. EVANS: Nothing further, Your Honor.

14 BY MR. DE GRUY: No questions.

15 BY THE COURT: You may step down, Ms. Allen.

16 (Juror 9, Ms. Allen, leaves the courtroom.)

17 BY THE COURT: I'm going to excuse her for cause.
18 Any objection?

19 BY MR. EVANS: No, sir.

20 BY MR. DE GRUY: No objection.

21 BY THE COURT: To tell you the truth, I let the
22 time get away from me. I thought that thing said 11
23 o'clock instead of 12 o'clock. Why don't we break for
24 lunch, and we will break until about 1:15.

25 You can tell those jurors -- well, it is just
26 three of them; I will tell them. Bring these others
27 in and let me let them go, and then we will bring the
28 other three in.

29 JURY PANEL ENTERS THE COURTROOM.

Jury released for lunch

1 **BY THE COURT:** Ladies and gentlemen, I have let
2 time get away from me a little bit. We are going to
3 break for lunch. We will take about an hour and start
4 back at about 1:15. You are free to go wherever you
5 would like for lunch, and we will come back and start
6 the same process that we are doing or continue the
7 same process that we are doing now.

8 I will give you these instructions though. I
9 don't want you talking about this case amongst
10 yourselves nor with anybody else, nor allow anybody to
11 talk about this case in your presence. It is possible
12 that you could run into some media coverage of this
13 matter at this time. If it is, do not listen to it or
14 read it. Do not form any opinions about this case
15 because you do not have-- well, some of you may have
16 some opinions already, and we are going to talk about
17 that, but don't form any new opinions while you are
18 out for lunch because you haven't heard any evidence
19 or anything in this case.

20 We will break until 1:15. I will see you back
21 then. I need you all back then at that time.

22 (JURY PANEL LEAVES THE COURTROOM, AND THREE OTHER
23 JURORS WHO HAD BEEN IN THE BOARD OF SUPERVISORS ROOM ENTERED
24 THE COURTROOM.)

25 **BY THE COURT:** Y'all need to come up here. We
26 are going to break for lunch. We will break until
27 about 1:15. I need for y'all to be back at 1:15. You
28 just go on back to that room when you come back. Do
29 not discuss this amongst yourselves or with anybody

Individual Voir Dire Continued - JURY OUT

1 else or allow anybody to discuss it with you. You
2 haven't heard any evidence or anything, so don't form
3 any new opinions about the thing. Okay? So I will
4 see y'all back at 1:15.

5 (FOLLOWING THE NOON RECESS, THE BAILIFF CALLED THE
6 ROLL OF THE JURORS IN THE BOARD OF SUPERVISORS ROOM. ALL
7 WERE PRESENT INCLUDING THE JURORS WHO WERE REPORTING BACK
8 FROM THE PREVIOUS DAY. INDIVIDUAL VOIR DIRE CONTINUED IN
9 OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT PRESENT AND
10 WITH THE REST OF THE JURY PANEL OUT.)

11 **BY THE COURT:** Ms. Whaley.

12 (JUROR NO. 10, MS. PEARLINE RATLIFF WHALEY, enters
13 the courtroom.)

14 **BY THE COURT:** Have a seat, please.

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. State your name, please.

17 A. Pearline Whaley.

18 Q. Ms. Whaley, have you ever heard anything about this
19 case?

20 A. Yes.

21 Q. How did you get that information?

22 A. Out of the paper, television.

23 Q. Okay. Have you ever heard any community talk,
24 street talk, or gossip about it?

25 A. Just normal stuff, you know.

26 Q. Okay. Did you know any of the victims?

27 A. Yes. I knew the owner of the store.

28 Q. Okay. Did you know Mr. Golden?

29 A. No.

Individual Voir Dire - JURY OUT

1 Q. Okay. Do you know the victims' families?

2 A. No.

3 Q. Do you know Mr. Flowers?

4 A. I know his parents.

5 Q. Okay. How is it that you know them?

6 A. From church.

7 Q. Okay, you go to the same church they do?

8 A. Occasionally.

9 Q. Okay. Have you ever discussed this with them or
10 had them discuss it with you in your presence?

11 A. No.

12 Q. Based on what you have heard, Ms. Whaley, and also
13 based on your relationship with the Flowers, have you formed
14 an opinion as to the guilt or innocence of Mr. Flowers in
15 this case?

16 A. Yes.

17 Q. Would that opinion prevent you from being a fair
18 and impartial juror in this case?

19 A. I believe it would.

20 Q. Okay. Thank you, ma'am.

21 **BY THE COURT:** Mr. Evans.

22 **BY MR. EVANS:** No questions, Your Honor.

23 **INDIVIDUAL VOIR DIRE BY MR. DE GRUY:**

24 Q. Ms. Whaley, are you telling us that you could not
25 set aside your opinion and listen to the evidence that is
26 presented in court?

27 A. I could listen to it, yeah, but you know.

28 Q. Okay, well, it is going to take a little more than
29 listening. Could you fairly listen to it and form an opinion

Individual Voir Dire - JURY OUT

1 based only on what you hear in court?

2 A. Yeah. I could.

3 Q. You could do that?

4 A. Yeah.

5 **BY THE COURT:** Okay, well, let me ask you another
6 question, Ms. Whaley.

7 ADDITIONAL VOIR DIRE BY THE COURT:

8 Q. If you were seated as a juror, you would have to--
9 you would sit over there, and you would be required to listen
10 to the evidence that comes from the witness stand--

11 A. Yeah.

12 Q. Get my instructions on the law; take those
13 instructions and apply them to the facts.

14 A. Yeah.

15 Q. And discuss it with your fellow jurors and then
16 reach a decision. Could you, in light of the fact that you
17 have got an opinion, could you do that? Let's say the facts
18 were different than what your opinion was.

19 A. Yes.

20 Q. You could do that?

21 A. Yes, I could.

22 Q. Okay. Do you think then you could be a fair and
23 impartial juror?

24 A. Yeah.

25 Q. Okay. Ms. Whaley, I asked the question of the jury
26 as a whole as to whether or not they had a religious or
27 philosophical or personal belief that would prohibit them
28 from imposing the death penalty which could be one of the
29 decisions that has to be made in this case. You didn't give

Individual Voir Dire - JURY OUT

1 me any response to that. Do I take that to mean that you
2 could impose the death penalty?

3 A. (Pause.) Yes. I guess so. Yeah.

4 Q. Let me put it to you this way then. Of course,
5 there wouldn't be any, there wouldn't be any penalty phase at
6 all until after there had been the first phase to determine
7 the guilt or innocence of Mr. Flowers. If the jury found
8 beyond a reasonable doubt that he was guilty of this, then we
9 would go to the second phase at which time the State would
10 put on evidence of aggravating factors which would tend to
11 warrant the death penalty. The Defendant would put on
12 evidence of mitigating factors which would be factors about
13 him and his life and family and those kind of things that
14 would tend to show that the death penalty wasn't warranted.

15 I would give the jury a written instruction that
16 contained those factors and also instructions on how they
17 should consider those factors in reaching a verdict in this
18 case. Do you understand that that is what the procedure
19 would be?

20 A. Yeah.

21 Q. Okay. If you had been on the jury and they had
22 found him guilty, could you then consider those, that
23 evidence and that instruction on the law that I gave?

24 A. Yeah.

25 Q. Okay, if I instructed you then that the law
26 authorized the imposition of the death penalty and you found
27 that the evidence warranted it, could you impose the death
28 penalty?

29 A. No.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** Okay.

2 INDIVIDUAL VOIR DIRE BY MR. EVANS:

3 Q. How are you doing, Ms. Whaley?

4 A. Fine.

5 Q. A couple of things I want to go into with you. To
6 start with, you say you know the Defendant's mother and
7 father?

8 A. Yeah.

9 Q. Do you know other members of his family?

10 A. No.

11 Q. But you know them well, and you know them from
12 church; is that right?

13 A. Yes.

14 Q. Now to start with, what we are attempting to do is
15 get a jury that has no outside influences in the case, that
16 is not related to the Defendant, not related to possible, to
17 the victims, that doesn't have one reason or other to lean at
18 this point for the Defendant or against the Defendant. You
19 understand that?

20 A. Yes.

21 Q. And you have already said that at this point you
22 have an opinion, and that opinion is based on the facts that
23 you go to church with his mother and father; is that correct?

24 A. Yes.

25 Q. And based on the fact that you are friends with
26 them, you already have an opinion; don't you think that that
27 would enter into your thought process if you were picked as a
28 juror in this case?

29 A. I believe it probably would enter into my mind.

Individual Voir Dire - JURY OUT

1 Q. And nobody is judging anybody because all of us
2 have different friends, relatives, things like that. But in
3 this particular case because of those friendships and church
4 associations, don't you think that would keep you from being
5 a fair and impartial juror in this particular case?

6 A. I believe it really would.

7 Q. Okay. And on the death penalty issue, this is a
8 capital murder case?

9 A. Right.

10 Q. In this case if the jury finds the Defendant
11 guilty, then we will go into a second phase. In that phase
12 the State will put on certain evidence in an attempt to show
13 the jury that the penalty should be death. The Defense will
14 put on evidence -- and it can be almost anything about his
15 life, how he grew up -- they pretty well can decide what they
16 want to put in front of the jury to show the jury that the
17 penalty should be life. At that point the Judge will read
18 instructions to the jury. In that instruction the Judge will
19 tell the jury step by step what they are to do to look at the
20 proper penalty. If the Judge tells you in that instruction
21 that the death penalty is authorized in this case and if you
22 found that the facts justified it in this case, are you
23 telling us that you could not vote for the death penalty even
24 then?

25 A. No.

26 BY MR. EVANS: That's all, Your Honor.

27 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

28 Q. Ms. Whaley, just so I am clear; you are saying that
29 you don't believe you could be a fair juror?

Individual Voir Dire - JURY OUT

1 A. No, I don't.

2 Q. Okay, thank you.

3 BY MR. DE GRUY: That's all I have.

4 BY THE COURT: You can step down, ma'am.

5 (Juror 10, Ms. Whaley, leaves the courtroom.)

6 BY THE COURT: I'm going to excuse her for cause.

7 Any objection?

8 BY MR. EVANS: No, sir.

9 BY MR. DE GRUY: No objection.

10 BY THE COURT: She can go. Linda Tharp.

11 (JUROR NO. 11, MS. LINDA M. THARP, enters the
12 courtroom.)

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. Would you state your name, please, ma'am.

15 A. Linda Tharp.

16 Q. Ms. Tharp, have you heard anything about this case?

17 A. Yes, sir.

18 Q. How did you hear about it?

19 A. Just friends and relatives, read in the paper.

20 Q. Community talk?

21 A. Right.

22 Q. Was any of this community talk, did it come from
23 people or persons that purported to know what the actual
24 facts were, or was it just gossip?

25 A. Um, different people that had been associated, I
26 guess, with the case. I don't know if it was, you call it
27 gossip or not.

28 Q. Okay, well, who would that be, please, ma'am?

29 A. Well, one of my daughters lived -- let's see. Her

Individual Voir Dire - JURY OUT

1 mother-in-law lived in Tupelo at the time the trial was up
2 there.

3 Q. Okay.

4 A. And I talked with her a time or two. But now she
5 just worked in the courthouse. I guess it was gossip.

6 Q. Okay. Well, she wasn't like a witness to this case
7 or anything like that?

8 A. No.

9 Q. Okay. Did you read about it in the newspaper and
10 see it on television, hear it on the radio when it happened
11 and all?

12 A. Yes, sir.

13 Q. Okay. You are familiar then with the other trial
14 from Tupelo?

15 A. Yes.

16 Q. Were you familiar, or do you know what the outcome
17 of that was?

18 A. Yes, sir.

19 Q. Okay. Based on what you have heard and your
20 knowledge of this case, Ms. Tharp, have you formed an opinion
21 as to the guilt or innocence of Mr. Flowers?

22 A. I think I have.

23 Q. All right. Would that opinion keep you from being
24 a fair and impartial juror?

25 A. It possibly could.

26 Q. Thank you, ma'am.

27 **BY THE COURT:** Mr. Evans.

28 **BY MR. EVANS:** Follow up just a little, Your
29 Honor.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY MR. EVANS:

Q. Ms. Tharp, what we need to know is a little more than possibly. What I would like to do is go a little bit into that. Of course, what we are trying to do is find a jury that can be fair and impartial, not let any outside influence enter into their decision in the case. There is probably nobody that hasn't at least heard about the case, but we are trying to find a jury that can disregard anything that they have heard and base a decision strictly on what they hear in court and what law that the Judge gives. Now, and nobody is trying to influence you into saying anything one way or the other. We are just trying to find out a definite answer one way or the other. If you were picked as a juror, could you disregard anything that you have heard about this case, listen to the evidence in the courtroom, and base your decision on the evidence and not something that you may have heard outside the courtroom?

A. I'm afraid I might be influenced by what I have already heard.

Q. Okay, so you think that that might influence your opinion?

A. I'm afraid it might.

Q. Okay. Thank you.

BY MR. EVANS: That's all, Your Honor.

BY MR. DE GRUY: No questions, Your Honor.

BY THE COURT: Thank you, ma'am. You may step down.

(Juror 11, Ms. Tharp, leaves the courtroom.)

BY THE COURT: I'm going to strike her for cause.

Individual Voir Dire - JURY OUT

1 Any objection?

2 BY MR. EVANS: No, sir.

3 BY MR. DE GRUY: No objection.

4 BY THE COURT: James Buckhalter.

5 (JUROR NO. 12, MR. JAMES TAYLOR BUCKHALTER, enters
6 the courtroom.)

7 INDIVIDUAL VOIR DIRE BY THE COURT:

8 Q. State your name please, sir.

9 A. James T. Buckhalter.

10 Q. Mr. Buckhalter, have you heard anything about this
11 case?

12 A. Have I heard -- say what now?

13 Q. Do you know anything about this case?

14 A. Yeah, I know, I heard a little bit about it.

15 Q. Okay, didn't you tell me -- now I may have, I may
16 have this wrong. I have talked to so many folks. Do you
17 know Mr. Flowers?

18 A. Yes, sir.

19 Q. And I believe you told me y'all were friends; is
20 that correct?

21 A. That's right.

22 Q. And have been for how long?

23 A. Ever since we was born.

24 Q. Huh?

25 A. For a long time.

26 Q. For a long time?

27 A. (Juror nods his head.)

28 Q. All right. Have you heard anything about this case
29 from his family?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Did you hear about it on the radio and news?

3 A. No, this out of the street.

4 Q. Just out on the street?

5 A. Yeah.

6 Q. Okay. Mr. Buckhalter, do you have an opinion based
7 on what you have heard and your relationship with Mr. Flowers
8 as to the guilt or innocence of Mr. Flowers?

9 A. I don't even want to be in this.

10 Q. I understand that. Well, have you got an opinion
11 about this case?

12 A. (No response.)

13 Q. It's okay if you do. I mean almost everybody here
14 has had some kind of opinion.

15 A. Not really. I ain't got no opinion about it, but I
16 don't want to be in this right here.

17 Q. Okay. Do you think that you, because of your
18 friendship with him, you could not be a fair and impartial
19 juror to both sides?

20 A. That's right.

21 Q. Okay.

22 **BY THE COURT:** Mr. Evans, have you got any
23 questions?

24 **BY MR. EVANS:** I will reserve my right, but I
25 don't have any at this point.

26 **BY THE COURT:** Yeah.

27 **BY MR. DE GRUY:** I have no questions.

28 **BY THE COURT:** Okay, you may step down,
29 Mr. Buckhalter.

Individual Voir Dire - JURY OUT

1 (Juror 12, Mr. Buckhalter, leaves the courtroom.)

2 BY THE COURT: I'm going to excuse him for cause.

3 Any objection?

4 BY MR. EVANS: No, sir.

5 BY MR. DE GRUY: No, Your Honor.

6 (JUROR NO. 13, MS. LINDA FLEMING, enters the
7 courtroom.)

8 INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. State your name, please, ma'am.

10 A. Linda Jean Fleming.

11 Q. Ms. Fleming, did you tell me earlier that you are
12 related to Mr. Flowers?

13 A. No, I told you I knowed him.

14 Q. You knew him?

15 A. Uh-hum.

16 Q. Okay. Do you know anything about this case?

17 A. Yes. I have a first cousin that is testifying.

18 Q. Who is that?

19 A. Clemmie Fleming.

20 Q. Clemmie Fleming, okay. Have you discussed this
21 matter with her?

22 A. Yes.

23 Q. You have talked to her about it?

24 A. Uh-hum.

25 Q. Okay. Did you see any media coverage of this when
26 it happened or afterwards?

27 A. Yes.

28 Q. Based on what you have heard and your discussions
29 with one of the witnesses in this case, have you formed an

Individual Voir Dire - JURY OUT

1 opinion as to the guilt or innocence of Mr. Flowers?

2 A. My opinion? Whether he innocent?

3 Q. Yes.

4 A. Innocent.

5 Q. Okay. So you have formed that opinion; is that
6 correct?

7 A. Yes, sir.

8 Q. Okay. Ms. Fleming, do you believe you could be a
9 fair and impartial juror in this case since you have got an
10 opinion?

11 A. Yes, sir.

12 Q. Okay. Could you sit over there and listen to the
13 evidence that comes from the witness stand, take my
14 instructions on the law, consult with your fellow jurors and
15 then decide this case?

16 A. Yes, sir.

17 Q. Okay. If, in fact, you did sit on this case and
18 the jury unanimously found, which would include you, that he
19 was guilty of this charge, then we would go to the penalty
20 phase. And at that penalty phase there would be two options.
21 There would be death, a death sentence or life in prison. At
22 that stage the State would put on evidence of aggravating
23 circumstances which would tend to warrant the death penalty.
24 Also, at that time the Defendant would put on evidence of
25 mitigating circumstances which would tend to weigh against
26 the death penalty.

27 I would give the jury a written instruction that
28 contained those factors that would tell you how to evaluate
29 that and how to return a verdict, although it would be the

Individual Voir Dire - JURY OUT

1 jury's, up to the jury to determine consistent with those
2 instructions what verdict that they would return. If at that
3 point I had instructed you that the law authorized the
4 imposition of the death penalty and you found that the
5 evidence warranted it, could you impose the death penalty?

6 A. No, sir.

7 Q. Okay.

8 **BY THE COURT:** Mr. Evans.

9 **BY MR. EVANS:** Thank you, Your Honor.

10 INDIVIDUAL VOIR DIRE BY MR. EVANS:

11 Q. How are you doing, Ms. Fleming?

12 A. Fine.

13 Q. There are a couple of things I would like to go
14 into with you. You have stated this morning and to the Judge
15 that you are friends with the Defendant, and I think this
16 morning the way you put it, that that would affect your
17 decision because of you knowing him; is that correct?

18 **BY MR. CARTER:** Your Honor--

19 **BY THE JUROR:**

20 A. -- I wasn't saying--

21 **BY THE COURT:** -- Wait just a minute; wait just a
22 minute, Ms. Fleming. Go ahead.

23 **BY MR. CARTER:** Your Honor, I don't know whether
24 she said -- according to what I wrote down, I don't
25 know whether she said she was friends with him.

26 **BY THE COURT:** Okay. Well, you are going to get
27 a chance to ask her some questions. Right now it is
28 his turn.

29 **BY MR. EVANS:**

Individual Voir Dire - JURY OUT

1 Q. All right, what I was asking you, what I wrote down
2 this morning is that you had said you were friends with the
3 Defendant and that that would affect your decision in this
4 case; is that right?

5 A. I wouldn't necessarily say that we are friends,
6 friends. I just know him and I know his family, his mother
7 and his sister.

8 Q. All right, how do you know him, his family, his
9 mother--

10 A. -- His mother works at the nursing home where I
11 works at.

12 Q. Okay, so you work with his mother?

13 A. Uh-hum.

14 Q. How long have you worked with her?

15 A. I think she been there for two years or three.

16 Q. Two or three years?

17 A. Yes.

18 Q. How do you know his sisters?

19 A. Huh? We all went to school together at Winona High
20 and elementary.

21 Q. Okay. Would you consider yourself friends of
22 theirs?

23 A. Yes. They are respectable people.

24 Q. Okay. And you know Clemmie Fleming. You are
25 related to her?

26 A. Yes, that is my first cousin.

27 Q. All right, now before we even get to the death
28 question, what we are trying to do is find a jury that
29 doesn't have some outside influence that is already going to

Individual Voir Dire - JURY OUT

1 sway them one way or the other, either for the Defendant or
2 for the State. What the Court wants is a fair and impartial
3 jury that has no outside influences. And the fact that you
4 know basically his whole family; you work with his mother;
5 you are friends with his sisters; you grew up with his
6 sisters; wouldn't that have to affect your decision if you
7 were picked as a juror on this case?

8 A. Yes, because I don't want to hurt them in any kind
9 of way.

10 Q. I understand. And that is something I think we all
11 understand, but it's something that we are trying to make
12 sure that we get to in here. Because of the fact that you
13 don't want to hurt them in any way, wouldn't that keep you
14 from being fair and impartial on this particular case?

15 A. Yes. I reckon so.

16 Q. Thank you, ma'am.

17 BY MR. DE GRUY: No questions, Your Honor.

18 BY THE COURT: Ms. Fleming, you may step down.

19 (Juror 13, Ms. Fleming, leaves the courtroom.)

20 BY THE COURT: I strike her for cause?

21 BY MR. EVANS: Yes, sir. We move--

22 BY THE COURT: Any objection?

23 BY MR. DE GRUY: No objection.

24 (JUROR NO. 14, MR. JAMES EARP FORREST, enters the
25 courtroom.)

26 INDIVIDUAL VOIR DIRE BY THE COURT:

27 Q. State your name, please, sir.

28 A. James Earp Forrest.

29 Q. Mr. Forrest, of course, you have told me earlier

Individual Voir Dire - JURY OUT

1 today that you were Mr. Flowers' second cousin; is that
2 correct?

3 A. Yes, sir.

4 Q. Okay. Have you -- you know something about this
5 case, don't you?

6 A. Yes, sir, just what I have heard. Yes, sir.

7 Q. Has it been discussed within your family?

8 A. Yes, sir.

9 Q. Have you, did you hear it from the news media and
10 things?

11 A. I have heard it from news media too.

12 Q. Did you hear other community talk about it other
13 than in your family?

14 A. Yes, sir. I heard other people talk about it.

15 Q. Did you know any of the victims in this case?

16 A. Not personally. I didn't know any of them.

17 Q. Okay. Do you know any of their family?

18 A. Yes, sir. I know some of their family.

19 Q. Who is that that you know?

20 A. Robert Golden.

21 Q. You ever discuss this with any of his family?

22 A. No, I didn't.

23 Q. And of course, you obviously know Mr. Flowers?

24 A. Yes.

25 Q. And the rest of the Flowers family; is that
26 correct?

27 A. Yes, sir.

28 Q. Based on what you have heard about this case and
29 your relationship with the Flowers, have you formed an

Individual Voir Dire - JURY OUT

1 opinion as to the guilt or innocence of Mr. Flowers in this
2 matter?

3 A. Well, to myself, I have. I just, really I have.

4 Q. Okay. Would that opinion prohibit you from being a
5 fair and impartial juror in this case?

6 A. I feel like it wouldn't. I feel like it wouldn't
7 bother me.

8 Q. Okay. If you were seated as a juror, could you
9 listen to the evidence that comes from the witness stand,
10 take my law that I give you at the end of the case, apply it
11 to the facts as you see them, and discuss that with your
12 fellow jurors and base a decision based on that rather than
13 your relationship to the Defendant and what you might have
14 heard?

15 A. I could. I could just base it on the facts, but I
16 really, just to get down deep with it, I have a lot more
17 things, issues about it, but I could be honest about the
18 whole thing on it.

19 Q. Well, would those issues prohibit you from being a
20 fair and impartial juror for both sides?

21 A. No, it wouldn't.

22 Q. Okay. Now I asked this morning of the whole panel
23 as to whether or not they had any religious or philosophical
24 or personal beliefs in opposition to the death penalty. My
25 notes don't show that you answered that question. So my
26 question to you is do you have such a belief?

27 A. No, I don't. I don't.

28 Q. Okay. If this case were, when this case gets
29 tried, if the jury at the first stage of the trial finds

Individual Voir Dire - JURY OUT

1 Mr. Flowers guilty, then the second phase would be for the
2 penalty. And the only two penalties are going to be death
3 and life in prison. At that time the State is going to put
4 on evidence of what is called aggravating factors. Those
5 factors will be for the purpose of showing that the death
6 penalty is warranted and allowable under the law. And then
7 later at that stage the Defendant is likely going to put on
8 mitigating factors which will be family members or -- well, I
9 don't know what he is going to put on, but he will probably
10 put on something like family members or things about
11 Mr. Flowers' life and things that would be evidence that
12 would tend to sway the jury to vote for life. Do you
13 understand that that is the process?

14 A. Right. Yes, sir.

15 Q. Also, I would give the jury a written instruction
16 that contained all those things, and it would also have
17 instructions about how you evaluate them and then reach a
18 verdict, although the jury would be the one to determine in
19 the long run what they do with those factors. But you
20 understand that part of it?

21 A. Yes, sir. I understand.

22 Q. Okay. If we get to that point, then I will have
23 told you that the law has authorized the imposition of the
24 death penalty. And my question to you is if I tell you that
25 and you find that the evidence warrants the imposition of the
26 death penalty, could you impose it in this case?

27 A. Yes, sir. I could.

28 Q. Okay.

29 BY THE COURT: Mr. Evans.

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Thank you, Your Honor.

2 INDIVIDUAL VOIR DIRE BY MR. EVANS:

3 Q. How are you doing, Mr. Forrest?

4 A. Doing fine.

5 Q. Mr. Forrest, a few things I want to go into with
6 you. I understand from what you have told the Court that you
7 are related to the Defendant. I think y'all are cousins?

8 A. Yes.

9 Q. Other than being related, are y'all fairly close?

10 A. We are pretty close.

11 Q. All right. How about his mother and father; are
12 you pretty close with them?

13 A. Yes, sir.

14 Q. Do you see them all very often?

15 A. See them all the time.

16 Q. I notice from your questionnaire that you are a
17 pastor?

18 A. Yes.

19 Q. Do they go to your church?

20 A. No, sir. Well, me and his father belongs to the
21 same church.

22 Q. Okay, and what church is that?

23 A. Columbiana United Methodist Church.

24 Q. Okay. So you are related to them; you're close
25 friends to them; you go to church together; and you know, I
26 know this may sound silly, but for the record, you are family
27 members with his whole family?

28 A. Right.

29 Q. Immediate family, brothers, sisters, his relatives,

Individual Voir Dire - JURY OUT

1 the other Forrests in the community or the Campbells in the
2 community and all of them?

3 A. Right.

4 Q. And I know this has had to have been discussed
5 among the family?

6 A. Yes, sir.

7 Q. What I'm trying to get to and what I want you to
8 understand while I'm asking the question, nobody is judging
9 you or any other juror. But what we are trying to do, we are
10 trying to get a jury that doesn't have any influences one way
11 or the other, that is not related to the Defendant, that is
12 not related to the victims, that wouldn't tend to lean toward
13 the victim, or wouldn't tend to lean toward the Defendant, so
14 that we can have a jury that can come in here with a complete
15 open mind and clean slate that doesn't already have opinions
16 or have things that would influence them.

17 A. Okay.

18 Q. To reach a verdict based strictly on what is heard
19 in the courtroom. Don't you think that because of these
20 close associations and family memberships and going to
21 church, that that would cause you to lean toward the
22 Defendant and his family?

23 A. I don't, I don't think it would. But if you are
24 saying whether I love him or not, I love him with all my
25 heart. If that's what you are saying, but to narrow it down
26 to what sounds right and what is wrong with the opinion that
27 is based out, it won't -- I don't think it would stop none of
28 the love or nothing on anything.

29 Q. Are you saying that it wouldn't make it more

Individual Voir Dire - JURY OUT

1 difficult for you to reach a decision in this case?

2 A. I'm saying that it was, from what you are saying
3 now, it's already been difficult to us already been, been
4 done. I am living with that, you know.

5 Q. And that's what I'm getting at. It has already
6 been difficult on him and his family. It has already been
7 difficult on the victims' families?

8 A. (Juror nods his head.)

9 Q. Would you think it would be right for say a brother
10 of a victim to sit on the jury?

11 A. No.

12 BY MR. CARTER: Your Honor, I think that is
13 improper--

14 BY THE JUROR: --I think what you are doing--

15 BY THE COURT: --Wait, wait, sir.

16 BY THE JUROR: Oh, I'm sorry.

17 BY THE COURT: That is all right. You don't have
18 to answer that question. It is sustained.

19 BY MR. EVANS:

20 Q. Well, let me rephrase that. Not on this case, but
21 on any case, would you think that it would be right for
22 someone that had personal reason to care about the outcome of
23 the case to sit on any case for either side?

24 BY MR. CARTER: Same objection, Your Honor.

25 BY THE COURT: Well, I will let him ask it
26 phrased like that. Although -- wait a minute, no. I
27 sustain the objection. His opinion about that thing
28 is not relevant to the issues. His opinion in
29 relation to whether he can be fair and impartial is.

Individual Voir Dire - JURY OUT

1 That is an abstract question that is not relevant.

2 BY MR. EVANS:

3 Q. All right, well, let's get to your opinion.

4 A. Well, what I was here for is just to be a juror,
5 and I just said my honesty -- I understand part, you know,
6 your question, what you're asking. But I said that earlier
7 it wouldn't, it wouldn't form an opinion about it. I feel
8 like that justice is going to stand, you know, and I just
9 feel like -- I know exactly what you are trying to get to
10 and--

11 Q. --Well, what I'm trying to get to, do you already
12 have an opinion as to what justice should be in this case?

13 A. Well, yeah. I have got an opinion what justice--

14 Q. -- And that's what I'm trying to find out. If you
15 have already got an opinion as to what justice should be in
16 this case, then does that not influence your decision in this
17 case?

18 A. No. It won't.

19 Q. What is your opinion of what justice should be?

20 BY MR. CARTER: Your Honor, I object.

21 BY THE COURT: He is entitled to ask him what his
22 opinion is. Y'all have all been doing that the whole
23 voir dire.

24 BY MR. EVANS:

25 Q. What is your opinion of what justice should be--

26 BY THE COURT: -- No. That is not what I said.

27 BY MR. EVANS:

28 Q. What is your opinion?

29 A. Okay, I just feel like justice should be served,

Individual Voir Dire - JURY OUT

1 you know. Just straight down the middle, judging what the
2 evidence has been laid out forward. From the way I hear it
3 and the way I see it, I will go from there. Not from what--

4 Q. -- And if the State puts on proof beyond a
5 reasonable doubt, you would have no problem with that?

6 A. I don't feel like the family would hate me because
7 of that.

8 Q. But my question is not what the family would think.

9 A. That is my opinion. I just feel like I could do--

10 Q. -- Would it affect you?

11 A. No, it won't affect me.

12 Q. If you were picked as a juror on this case and you
13 heard the evidence and you voted guilty, would you be able to
14 go to church with his father and sit there and look at him?

15 A. Yes.

16 Q. It wouldn't bother you?

17 A. It wouldn't bother me if it don't bother him.

18 Q. But what if it did bother him?

19 A. Well, I have to just be honest about it. I mean
20 that is my opinion on it.

21 Q. All right, and you understand from what the Judge
22 has said that this is a case where the death penalty is a
23 possible penalty?

24 A. Right.

25 Q. Can you tell us here today because of your close
26 association and kinship with his family, that you wouldn't
27 automatically vote against the death penalty?

28 A. Yeah, I can tell you that.

29 Q. On your questionnaire, you didn't answer that

Individual Voir Dire - JURY OUT

1 question. Is there any reason?

2 A. About what?

3 Q. You put that it was not applicable. Is there any
4 reason that you put that instead of answering it?

5 A. Which question was it?

6 Q. The question was question number 38 that says, Do
7 you have any personal or religious belief that would prevent
8 you from voting to impose the death penalty if the facts
9 justified the same?

10 A. I mean no, I don't have any.

11 Q. Was there any reason you put NA instead of
12 answering it?

13 A. Well, no, not really, just.

14 **BY MR. EVANS:** No further questions.

15 **BY THE COURT:** Mr. de Gruy?

16 **BY MR. DE GRUY:** We have no questions, Your
17 Honor.

18 **BY THE COURT:** Okay, you may step down, Mr.
19 Forrest.

20 (Juror 14, Mr. Forrest, leaves the courtroom.)

21 **BY THE COURT:** Any objection to him?

22 **BY MR. EVANS:** Yes, Your Honor. The State would
23 move that he be struck for cause. I don't think any
24 Court could assume that he could be fair and impartial
25 regardless of his answers from what he has stated in
26 his voir dire.

27 **BY THE COURT:** Well, that is an assumption the
28 law won't let me make. I won't strike him for cause.
29 He goes to the room. Ms. Townsend.

Individual Voir Dire - JURY OUT

1 (JUROR NO. 15, MS. RHONDA M. TOWNSEND, enters the
2 courtroom.)

3 INDIVIDUAL VOIR DIRE BY THE COURT:

4 Q. State your name, please.

5 A. Rhonda Michelle Townsend.

6 Q. Ms. Townsend, do you know anything about this case?

7 A. I do.

8 Q. How do you know it?

9 A. Just from when it happened.

10 Q. Just knew it went on?

11 A. Right.

12 Q. Did you see any media coverage of it?

13 A. I haven't.

14 Q. Have you heard street talk or gossip about it?

15 A. Uh-hum.

16 Q. Have you -- did you know the victims?

17 A. Yes, sir.

18 Q. Which ones?

19 A. Ms. Rigby and Mr. Golden and Derrick Stewart.

20 Q. Okay. Do you know their families?

21 A. Uh-hum.

22 Q. Have you ever had any discussions with them, or
23 have they ever discussed it in your presence?

24 A. No.

25 Q. How close friends were you with those victims?

26 A. Bryan and I were classmates. Bryan Rigby.

27 Q. Right. Okay, that is Ms. Rigby's son?

28 A. Uh-hum.

29 Q. Okay.

Individual Voir Dire - JURY OUT

1 A. And just Derrick from going, just going to school
2 with him.

3 Q. Okay. Do you know Mr. Flowers?

4 A. I know of him; uh-hum.

5 Q. Do you know his family?

6 A. I do.

7 Q. Who do you know in his family?

8 A. I know his sister Sherita.

9 Q. Okay. How do you know her?

10 A. Uh.

11 Q. Just because you live here?

12 A. No. I would say we are friends.

13 Q. You are friends, okay. Who else do you know?

14 A. I know his father.

15 Q. Who works at Wal-Mart?

16 A. Right.

17 Q. Okay.

18 A. A couple of his cousins also.

19 Q. All right, based on what you have heard,
20 Ms. Townsend, and based on the fact that you are friends with
21 some of these people, have you formed an opinion as to the
22 guilt or innocence of Mr. Flowers?

23 A. I have.

24 Q. Okay. Would that opinion keep you from being a
25 fair and impartial juror?

26 A. I believe it would.

27 Q. Thank you, ma'am.

28 **BY THE COURT:** Mr. Evans.

29 **BY MR. EVANS:** Same as before. Nothing, but I

Individual Voir Dire - JURY OUT

1 would like to reserve the right to ask later if I need
2 to.

3 **BY MR. DE GRUY:** I have no questions.

4 **BY THE COURT:** Ms. Townsend, you may step down.
5 And if you would, you can go out that side door. I
6 don't know where my bailiff went off to, but you can
7 go out that side door.

8 (Juror 15, Ms. Townsend, leaves the courtroom.)

9 **BY THE COURT:** I'm going to excuse her for cause.
10 Any objection?

11 **BY MR. EVANS:** No, sir.

12 **BY MR. DE GRUY:** No objection.

13 **BY THE COURT:** Connie Legg.

14 (JUROR NO. 16, MS. CONNIE VIRGINIA LEGG, enters the
15 courtroom.)

16 INDIVIDUAL VOIR DIRE BY THE COURT:

17 Q. State your name, please.

18 A. Connie Legg.

19 Q. Ms. Legg, have you heard anything about this case?

20 A. Just what is in the newspaper; just, you know, what
21 the normal.

22 Q. Have you heard street talk or gossip about it?

23 A. It's always going to be; yes, sir. I mean, you
24 know, but.

25 Q. And you have seen media coverage; is that correct?

26 A. Sure. That's correct.

27 Q. Did you know any of the victims?

28 A. Yes, I did.

29 Q. Okay. Which ones?

Individual Voir Dire - JURY OUT

1 A. BoBo Stewart.

2 Q. How did you know him?

3 A. He was on my husband's summer league baseball team.

4 Q. Did you know any of the others?

5 A. Um, not well. I mean.

6 Q. Do you know any of their families?

7 A. Yes.

8 Q. Who?

9 A. BoBo Stewart's family. I mean I know of his
10 father, Randy.

11 Q. Have any of these people ever discussed this matter
12 with you?

13 A. No, sir.

14 Q. Or in your presence. Have they ever discussed it
15 in your presence?

16 A. Oh, no, sir.

17 Q. Do you know Mr. Flowers?

18 A. No, I do not.

19 Q. Do you know any of his family?

20 A. Not that I'm aware of.

21 Q. Do you live in Winona?

22 A. Yes, I do.

23 Q. Ms. Legg, based on what you have heard and the fact
24 that you had some relationship with one of the victims in
25 this case--

26 A. Yes, sir.

27 Q. Have you formed an opinion based on that about the
28 guilt or innocence of Mr. Flowers?

29 A. Have I formed an opinion?

Individual Voir Dire - JURY OUT

1 Q. Yes, ma'am.

2 A. No.

3 Q. Okay.

4 A. I mean--

5 Q. -- If you were seated as a juror, could you listen
6 to the evidence that comes from the witness stand, take my
7 instructions on the law at the end of the case, apply it to
8 the facts and then discuss that with your fellow jurors and
9 reach a verdict based on that to the exclusion of anything
10 you might have heard outside of court and to the exclusion of
11 any relationship you might have had with anybody in this
12 case?

13 A. Yes, I could.

14 Q. Do you know of any reason that you could not be a
15 fair and impartial juror?

16 A. No, I could not.

17 Q. Okay. I asked this question in general to the
18 whole panel. Let me ask it to you again. Do you have a
19 religious, philosophical, or personal belief that puts you in
20 opposition to the death penalty?

21 A. No, I do not.

22 Q. The death penalty would be one of-- if we get that
23 far, would be one of the verdicts in this case. It could
24 only come after a jury had found that he was guilty of this.
25 And then we would have a separate hearing where the State
26 would put on testimony about aggravating-- and they would put
27 on aggravating circumstances, proof of aggravating
28 circumstances which would tend to warrant the death penalty.
29 The Defendant would put on mitigating circumstances which

Individual Voir Dire - JURY OUT

1 would tend to be against the death penalty. The Court, me,
2 would give you a written instruction that contained those
3 things, and it would also contain instructions on how you
4 were to reach a verdict in considering those things. Do you
5 understand that that is what the process would be?

6 A. Yes, sir. I do.

7 Q. Could you listen to that evidence and that
8 instruction on the law?

9 A. Yes, I could.

10 Q. If I instructed you that the law authorized the
11 imposition of the death penalty and you found from the
12 evidence that the evidence warranted it, could you impose the
13 death penalty?

14 A. Yes, I could.

15 Q. Okay.

16 **BY THE COURT:** Mr. Evans.

17 **BY MR. EVANS:** Thank you, Your Honor.

18 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

19 Q. How do you doing, Ms. Legg?

20 A. I'm doing fine. Thank you.

21 Q. I want to go into just a little bit more detail
22 than the Judge did. You understand at this phase in a trial
23 this Defendant or any defendant is presumed by law to be
24 innocent?

25 A. That's correct.

26 Q. And that is the way it should be--

27 A. Yes, sir.

28 Q. -- because the burden of proof is on the State of
29 Mississippi. We must prove to the jury beyond a reasonable

Individual Voir Dire - JURY OUT

1 doubt that he is guilty. He doesn't have to prove anything.

2 Do you have any problem with that theory of the law?

3 A. No, I do not.

4 Q. The way that also works is that once we have proven
5 to a jury beyond a reasonable doubt that he is guilty, he is
6 no longer protected with that presumption. You understand
7 that?

8 A. Yes, sir.

9 Q. And what we are trying to do is find a jury that
10 can completely disregard anything that they have heard about
11 the case, come in here as though they had never heard
12 anything at all, listen to the evidence and base a decision
13 on nothing except the evidence that comes out in the
14 courtroom and the law that the Judge gives the jury. Can you
15 do that?

16 A. Yes, I can.

17 Q. And if the jury convicts the Defendant, then we
18 will go into a second phase. That will be the sentencing
19 phase. In that phase we are attempting to get a jury that
20 will listen to both sides. The State, as the Judge told you,
21 we will put on evidence of aggravating factors. That will be
22 to try to show the jury that the penalty of death is
23 appropriate in this case. The Defense will be putting on
24 evidence of mitigating factors. That can just about be
25 anything about the Defendant's life. It may be things, for
26 example, about school or anything that the Defense thinks
27 might show the different jury that a life sentence is the
28 appropriate penalty.

29 I expect that the Judge will tell you that certain

Individual Voir Dire - JURY OUT

1 things the jury can consider. Anything that the Judge tells
2 the jury that they can consider about either the aggravating
3 factors or the mitigating factors, will you consider those
4 factors before you reach a verdict either way of death or
5 life?

6 A. Yes, sir.

7 Q. And as the Judge asked it a minute ago, if the
8 Judge tells you in the instructions that the death penalty is
9 warranted and after listening to all of those things and
10 looking at them, you feel after discussing the case with
11 other jurors that the death penalty is appropriate, could you
12 return a verdict of death?

13 A. Yes, I could.

14 Q. All right, we are also trying to find a jury that
15 wouldn't just automatically vote for the death penalty and
16 wouldn't automatically vote for life.

17 A. I understand.

18 Q. So can you tell us that you will go into that
19 sentencing phase with an open mind, not leaning one way or
20 the other, listen to the evidence, listen to the
21 instructions, and then make your decision on the sentence?

22 A. Yes, I will.

23 BY MR. EVANS: Nothing further, Your Honor.

24 BY MR. DE GRUY: Thank you, Your Honor.

25 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

26 Q. Ms. Legg, did you personally know BoBo Stewart?

27 A. Yes, I did.

28 Q. Had he ever visited in your home?

29 A. No, he had not.

Individual Voir Dire - JURY OUT

1 Q. You saw him out at the ball park?

2 A. Yes, sir. Yes, sir. He played baseball.

3 Q. Have you and your husband ever discussed his death?

4 A. Well, yes, we have. Naturally when it happened and
5 my husband was his coach, so yes. As a normal family, we
6 would naturally discuss that.

7 Q. And have y'all discussed it since, after you got
8 your subpoena?

9 A. Just in the normal talking, but not based on what
10 our opinions are. I mean what he -- we try not to do things
11 like that. But yes, as a husband and wife, naturally we
12 would talk. But what he does is, you know, his decision and
13 what is mine.

14 Q. And did he -- I assume he attended the funeral?

15 A. Oh, yes, and I did too. Yes, I did. The whole
16 entire baseball team did.

17 Q. In your discussions with your husband, has he
18 expressed an opinion about this case?

19 A. No, sir, not -- I mean as far as?

20 Q. As whether or not Mr. Flowers is guilty?

21 A. No. Because I mean we haven't been through the
22 trial and we haven't heard evidence.

23 Q. So in the discussions that you--

24 A. -- so we try not.

25 Q. Okay. Now you try not to be judgmental.

26 A. Exactly.

27 Q. And I understand that. But just in the discussions
28 that you said you and your husband from time to time have had
29 about BoBo's death, have either of you expressed opinions

Individual Voir Dire - JURY OUT

1 about whether or not Mr. Flowers is guilty?

2 A. We -- I mean I don't know how to answer that
3 because we have not been through, you know, the trial. I
4 mean--

5 Q. -- We are not asking, I'm not asking you to return
6 a verdict right now.

7 A. I understand that.

8 Q. You won't do that until you have heard evidence.

9 A. Sure.

10 Q. I'm just asking--

11 A. -- I mean I don't know whether he is or not.

12 Q. Okay. And what I'm asking is not what you know,
13 but what has been discussed because you have told us y'all
14 have had discussions.

15 A. Sure.

16 Q. And I'm just curious; during these discussions,
17 have you or your husband expressed an opinion about?

18 A. Not, not one way or another. No.

19 Q. And because this is a death penalty case, whether
20 it's discussions about whether Mr. Flowers is guilty or not
21 but just someone is responsible--

22 A. Exactly.

23 Q. Have y'all discussed what should happen or what the
24 appropriate punishment would be--

25 A. --not, no, sir. That is not for us to decide.

26 Q. I'm sorry?

27 A. That is not for us to decide. No, sir. We have
28 not.

29 Q. So y'all have not discussed it because you felt it

Individual Voir Dire - JURY OUT

wasn't for you to decide?

A. Well, no, we have not based that opinion. I mean I'm not going to say he did it or he did not do it. I mean because I don't know.

Q. Okay. And I understand and you shouldn't have an opinion--

A. Right.

Q. --yet.

A. I don't know.

Q. What I'm asking is--

A. -- I mean I--

Q. Have you had discussions about what should happen to whoever?

BY MR. EVANS: Your Honor, she has answered that question as straight as she can and I think--

BY THE JUROR:

A. -- I have--

BY MR. EVANS: --it has been covered at least three times.

BY THE COURT: I will let her answer. Go ahead.

BY THE JUROR:

A. I have not, I have never said that a person should die or that he should get life. No, sir. I am -- that is not for me to decide.

Q. And your husband hasn't expressed his opinion to you?

A. No, sir.

Q. And you are saying it's not for you to decide, and what we are here about today is to pick a jury--

Individual Voir Dire - JURY OUT

1 A. Sure.

2 Q. And they will be given that responsibility.

3 A. That's right.

4 Q. And then it would be your place to decide. Do you
5 think you would be able to make that decision then?

6 A. Based on the evidence that you bring before me,
7 yes, sir; I think I could.

8 BY MR. DE GRUY: I have no other questions.

9 BY THE COURT: Okay, Ms. Legg, you may step down.

10 BY THE JUROR: Thank you.

11 (Juror 16, Ms. Legg, leaves the courtroom.)

12 BY THE COURT: Any objection to her?

13 BY MR. EVANS: No, sir.

14 BY MR. DE GRUY: No, Your Honor.

15 BY THE COURT: I will be right back.

16 (The Court left the courtroom briefly. Upon his
17 return, proceedings continued:)

18 BY THE COURT: Mr. Young.

19 (JUROR NO. 17, MR. PATRICK YOUNG, enters the
20 courtroom.)

21 BY THE COURT: Have a seat, please.

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. State your name.

24 A. Patrick Young.

25 Q. Mr. Young, do you know anything about this case?

26 A. No more than what I read in the papers.

27 Q. Okay. Have you heard any street talk or gossip
28 about it?

29 A. No.

Individual Voir Dire - JURY OUT

1 Q. Okay. How long have you lived here, Mr. Young?

2 A. All my life.

3 Q. Do you recall when it happened?

4 A. Yes.

5 Q. Okay, did you hear any street talk or gossip about
6 it at that time?

7 A. No.

8 Q. Just what you read in the newspaper and the media?

9 A. Just what I read in the paper.

10 Q. Did you know any of the victims in this case?

11 A. No. No, sir.

12 Q. All right. Did you know any or do you know any of
13 their families?

14 A. No.

15 Q. Do you know Mr. Flowers?

16 A. No, but I have seen him in -- I have seen him
17 around, never conversated or anything with him.

18 Q. Do you know his family?

19 A. No. I have seen them around.

20 Q. Okay. Mr. Young, have you formed any opinion about
21 this case at all based on what you have heard?

22 A. No.

23 Q. Okay. If you were seated as a juror, could you
24 listen to the evidence that comes from the witness stand, get
25 my instructions on the law at the end of the case, apply them
26 to the facts as you see them, then talk with your other
27 jurors, and base your decision on that?

28 A. Yes, sir.

29 Q. Do you know of any reason that you could not be

Individual Voir Dire - JURY OUT

1 fair and impartial in this case?

2 A. No.

3 Q. Okay. Mr. Young, I asked all the jurors while ago
4 as to whether or not they had a religious or philosophical or
5 personal belief that would make them in opposition to the
6 death penalty. You did not indicate that you had such a
7 belief. Is that true?

8 A. Yes.

9 Q. Okay. By yes, do you mean you do not have any
10 opposition to it? What do you mean by yes?

11 A. I do not have any religious opposition.

12 Q. Well, if you sat on this jury and you found that,
13 and ended up finding him guilty, then it would go to a second
14 phase of the trial. At that phase the only thing that we
15 would be doing would be determining what the penalty is going
16 to be, which the jury has to do. And the two options they
17 would have would be death or life in the penitentiary. At
18 that stage the State would put on evidence of aggravating
19 factors which tended to warrant the death penalty. Also, at
20 that stage the Defendant would put on mitigating factors
21 which could be a lot of various things about Mr. Flowers and
22 his life and whatever, that would tend to weigh against the
23 death penalty. Do you understand that?

24 A. Yes, sir.

25 Q. That that is what the process would be?

26 A. (Juror nods his head.)

27 Q. I would also give the jury a written instruction
28 that contained those things. Plus it would give them
29 instructions on how they should consider them and what they

Individual Voir Dire - JURY OUT

1 should do in reaching a verdict, although in the long run the
2 jury would have to make up its own mind about that. Do you
3 understand that?

4 A. Yes, sir.

5 Q. Okay. If at the end of the trial I, and after you
6 had heard all this, I instructed you or instructed the jury
7 that the law authorized the imposition of the death penalty
8 and you found from the facts that the evidence warranted it,
9 could you impose the death penalty?

10 A. Honestly, I really don't think so.

11 **BY THE COURT:** Thank you, sir.

12 INDIVIDUAL VOIR DIRE BY MR. EVANS:

13 Q. How are you doing, Mr. Young?

14 A. All right.

15 Q. I just want to cover a couple of things with you.
16 You live in Duck Hill; right?

17 A. Right.

18 Q. You actually work in Grenada?

19 A. Yes.

20 Q. I wasn't sure if it was the Hankins part in Grenada
21 or down here?

22 A. It's in Grenada.

23 Q. Okay. Do you have much contact with folks in
24 Winona, or is it mainly Duck Hill and Grenada?

25 A. It's mainly Duck Hill and Grenada.

26 Q. You say you know the Defendant when you see him.
27 Is there anything about that that would affect your ability
28 to be fair and impartial in this case?

29 A. No, sir. It shouldn't.

Individual Voir Dire - JURY OUT

1 Q. You just know who he is?

2 A. Yeah, I just know him, yeah.

3 Q. And again, kind of like the Judge said, nobody is
4 trying to pressure you, but where you say it shouldn't and
5 things like that--

6 A. Yes.

7 Q. You are the only one that knows.

8 A. I understand.

9 Q. So we are just asking you. Is there anything about
10 that that would affect you?

11 A. No.

12 Q. So as far as the guilt or innocence phase of it,
13 just deciding whether he is guilty or not, you have nothing
14 that would affect your ability to be fair and impartial in
15 that part; is that right?

16 A. That's correct.

17 Q. All right, and as the Court told you, this is a
18 capital murder trial. So one of the two possible penalties
19 is the death penalty. That is one of the things if the jury
20 convicts in the first phase, that is one of the things that
21 the jury is going to have to decide is whether death penalty
22 or life. Now the way we get at that in the second phase -- I
23 represent the State. We will put on things to the jury that
24 are called aggravating circumstances. What we will be trying
25 to do is show the jury that the proper penalty should be the
26 death penalty. Then the Defense will put on what is called
27 mitigating circumstances. They will be trying to convince
28 the jury that the proper penalty in this particular case is a
29 life sentence and not the death penalty.

Individual Voir Dire - JURY OUT

1 But as the Judge told you, what we are trying to
2 determine right now is based upon your beliefs against the
3 death penalty, if you were picked as a juror and we got to
4 that point, are you telling us that you could not vote for
5 the death penalty yourself even if the Judge told you the law
6 authorized it and the facts justified it?

7 A. I don't think I could live with myself if I did it.

8 Q. Okay. And nobody is judging you on that. We are
9 all entitled to our own opinions. We just need to know for
10 sure what yours are. And by saying that you don't think you
11 could live with yourself, are you telling me that you could
12 not vote for the death penalty yourself even under those
13 circumstances?

14 A. Yes, sir.

15 BY MR. EVANS: That's all, Your Honor.

16 BY MR. DE GRUY: Just a few questions.

17 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

18 Q. Mr. Young, you have strong feelings against the
19 death penalty. You are expressing strong feelings against
20 the death penalty right now, and I just have a couple of
21 follow up questions. Do you remember filling out the
22 questionnaire, the five page questionnaire that came with
23 your summons?

24 A. Yes, sir.

25 Q. And you were asked in that questionnaire if you had
26 any personal or religious belief that would prevent you from
27 voting to impose the death penalty if the facts justified it,
28 and you said no. Do you remember?

29 A. I really don't remember.

Individual Voir Dire - JURY OUT

1 Q. And you have been -- I know you are trying to give
2 us an honest answer --

3 A. --yes, sir--

4 Q. -- and I'm not trying to talk you into the death
5 penalty, but you have said, I don't think so; I don't think I
6 could live with myself. And my question is just going to be
7 as straightforward and simple as I can. We all respect your
8 strong beliefs on this, and our question, what we need to
9 know is could you set those feelings aside, that belief aside
10 and listen to the evidence in this case and consider the
11 death penalty as one of two options?

12 A. I don't think I could because of the fact is I look
13 at it like this. It's just like if I killed him; that's the
14 way I look at it.

15 Q. I understand. I respect that.

16 BY MR. DE GRUY: I have no further questions.

17 BY THE COURT: You may step down, Mr. Young.

18 Thank you.

19 (Juror 17, Mr. Young, leaves the courtroom.)

20 BY MR. EVANS: Move for cause.

21 BY THE COURT: Any objection?

22 BY MR. DE GRUY: No objection.

23 BY THE COURT: Strike him for cause. Mr. Tyler.

24 (JUROR NO. 18, MR. MARLIN KIRK TYLER, enters the
25 courtroom.)

26 INDIVIDUAL VOIR DIRE BY THE COURT:

27 Q. State your name, please.

28 A. Marlin Kirk Tyler.

29 Q. Mr. Tyler, do you know anything about this case?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Have you, did you ever hear of it?

3 A. I heard of it.

4 Q. How did you get the information when you heard of
5 it?

6 A. The newspaper and the news.

7 Q. Okay. Do you live in Winona or some other part--

8 A. Duck Hill.

9 Q. Duck Hill, okay. Have you heard street talk or
10 gossip about this?

11 A. No.

12 Q. Did you know any of the victims in this case?

13 A. No, sir.

14 Q. Do you know any of their families?

15 A. No, sir.

16 Q. Do you know Mr. Flowers?

17 A. No, sir.

18 Q. Do you know any of his family?

19 A. No, sir.

20 Q. Based on what you have heard, have you formed any
21 opinion as to the guilt or innocence of Mr. Flowers in this
22 matter?

23 A. No, sir.

24 Q. If you were seated as a juror, would you listen to
25 the evidence that comes from the witness stand, take my law
26 at the end of the case, apply it to those facts, discuss
27 those matters with your fellow jurors, and base your decision
28 solely on that?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. Okay. When I asked the jurors this morning about
2 whether or not they had any religious or philosophical or
3 personal beliefs in opposition to the death penalty, you did
4 not answer, so I assume that that means you do not. Is that
5 correct?

6 A. That's right.

7 Q. Okay. That would be, that could be an issue in
8 this case. If the jury found, all twelve jurors found beyond
9 a reasonable doubt that he was guilty of this, then we would
10 go to a second phase at which time the State would put on
11 evidence of aggravating factors which would tend to weigh in
12 favor of the death penalty. The Defendant would put on
13 certain mitigating factors which could be a lot of different
14 things, like what kind of person he is, what kind of life he
15 had and those kind of things, which would be introduced to
16 sway the jury not to impose the death penalty.

17 I would give a written instruction that contained
18 all those things with directions on how the jury should
19 evaluate that and come to a decision. But in the long run,
20 of course, the jury would have to make the decision. If --
21 you understand all that?

22 A. Uh-hum.

23 Q. Okay. If I instructed you that the law authorized
24 the imposition of the death penalty and you found that the
25 evidence warranted it, could you impose the death penalty?

26 A. Yes, sir.

27 Q. Okay. Now it's kind of the reverse of that is,
28 once you found him guilty and you were presented with all
29 those factors and all I have just talked to you about, would

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 721.870

VOLUME 13 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT #: 2003-0071-CR

Individual Voir Dire - JURY OUT

1 you automatically impose the death penalty, or would you give
2 consideration to both options based on what you heard from
3 the witness stand?

4 A. Death penalty.

5 Q. The death penalty?

6 A. Death penalty.

7 Q. You could not, would not consider life as an
8 option?

9 A. No, sir.

10 Q. Okay.

FILED

11 BY THE COURT: Mr. Evans.

APR 14 2004

12 BY MR. EVANS: No questions. JULIE H. HALFACRE, CIRCUIT CLERK

13 BY THE COURT: Mr. de Gruy? BY _____ D.C.

14 BY MR. DE GRUY: No, sir.

15 BY THE COURT: Thank you, sir.

16 (Juror 18, Mr. Tyler, leaves the courtroom.)

17 BY THE COURT: I excuse him for cause. Any
18 objection?

19 BY MR. EVANS: No, sir.

20 BY MR. DE GRUY: No objection.

21 BY THE COURT: Linda Wood.

22 (JUROR NO. 19, MS. LINDA M. WOOD, enters the
23 courtroom.)

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. State your name, please, ma'am.

26 A. Linda Wood.

27 Q. Ms. Wood, do you know anything about this case?

28 A. Um, nothing factual; just, you know.

29 Q. Street talk or gossip?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Have you seen or heard the media coverage of this
3 from time to time?

4 A. I really have not.

5 Q. Did you know any of the victims?

6 A. No, sir. I did not.

7 Q. Do you know any of their families?

8 A. No, sir.

9 Q. Which part of the county do you live in?

10 A. I live in Stewart, which is east.

11 Q. Okay. On 82?

12 A. Yes, sir.

13 Q. Do you know Mr. Flowers?

14 A. No, sir.

15 Q. Do you know his family?

16 A. Not that I'm aware of, I don't.

17 Q. Ms. Wood, based on what you have heard about this
18 case, have you formed an opinion as to the guilt or innocence
19 of Mr. Flowers?

20 A. I don't think I have. I say that like that. I
21 have not, I don't know any facts. So no, sir; I have not.

22 Q. Okay. If you were seated as a juror, could you
23 listen to the facts that come from the witness stand, take my
24 instructions on the law at the end of the case, apply them to
25 the facts, and then discuss that with your fellow jurors and
26 make your decision based on those things that come out in
27 open court as opposed to what you have heard?

28 A. Yes, sir.

29 Q. Okay. Do you know of any reason that you could not

Individual Voir Dire - JURY OUT

1 be a fair and impartial juror in this case?

2 A. No, sir.

3 Q. All right. I asked all the jurors this morning if
4 they had any religious or personal beliefs that would be in
5 opposition to the death penalty. You did not respond to
6 that, so I assume that you did not have. Is that correct?

7 A. Yes, sir. That is correct.

8 Q. In this case that could be an option. First, the
9 jury you would have to unanimously find beyond a reasonable
10 doubt that the Defendant was guilty of this. After that,
11 then we would have a separate hearing, and at that hearing
12 the State would put on evidence of aggravating factors which
13 would tend to warrant the death penalty. After they had done
14 that, then the Defendant would put on mitigating factors
15 which would tend to weigh against the death penalty. I would
16 give the jury a written instruction that contained those
17 factors with instructions on how you were to reach a verdict
18 considering those things. Do you understand that would be
19 the process?

20 A. Yes, I do.

21 Q. If at the end of that, I instructed you that the
22 law authorized you to impose the death penalty and you found
23 that the evidence warranted it, could you impose the death
24 penalty?

25 A. Yes, sir.

26 Q. Okay. At that stage because you had found, the
27 jury had found him guilty; after considering all those
28 factors, could you also consider the life option? Would you
29 consider both options and listen to the evidence and stuff as

Individual Voir Dire - JURY OUT

1 it related to those, or would you automatically impose the
2 death penalty?

3 A. I think that I would consider the options.

4 Q. Okay.

5 **BY THE COURT:** Thank you, ma'am.

6 **BY MR. EVANS:** Thank you, Your Honor.

7 INDIVIDUAL VOIR DIRE BY MR. EVANS:

8 Q. How are you doing, Ms. Wood?

9 A. Just fine.

10 Q. I want to go into just a little more detail on a
11 few of these things. You understand and if you don't, I will
12 tell you. At this point in this trial or in any trial this
13 Defendant or any defendant is presumed to be innocent.

14 A. Yes, sir.

15 Q. The reason for that is the burden of proof is on
16 the State of Mississippi, and we must prove to whoever sits
17 up here in the jury that the Defendant is guilty beyond a
18 reasonable doubt before he can be found guilty. You
19 understand that?

20 A. Yes, sir.

21 Q. And at this point he is presumed innocent, but that
22 presumption only protects him up until the point that we have
23 proven to the jury beyond a reasonable doubt that he is, in
24 fact, guilty. Do you understand that?

25 A. Yes, sir.

26 Q. Now what we are attempting to do is get a jury --
27 of course, I think everybody in the county has heard
28 something about the case. We are attempting to get a jury
29 that can set aside anything that they have heard, come into

Individual Voir Dire - JURY OUT

1 the courtroom as though they knew nothing about the case,
2 disregard anything that they may have heard, listen to the
3 evidence as it comes out in court and the law that the Judge
4 gives the jury, and base a decision of guilt or innocence on
5 nothing except for what they hear in the courtroom and what
6 law that the Judge gives the jury. Can you do that?

7 A. Yes, sir.

8 Q. Okay. If the jury convicts the Defendant of
9 capital murder, then we go into a second phase. In that
10 second phase, there are two possible penalties. One is death
11 and one is life. The way the process will work, we will be
12 putting on aggravating factors for the jury. They will be
13 things that we think would tend to show the jury that the
14 death penalty would be the appropriate punishment.

15 The Defense, on the other hand, will be putting on
16 what is called mitigating factors. They can be basically
17 anything about the Defendant's life that the Judge will allow
18 in. The Judge will tell the jury what they can consider,
19 those factors the Defense will be putting on in an attempt to
20 show that a life sentence is the appropriate penalty in this
21 case.

22 What we are attempting to do on the first phase is
23 to get a fair and impartial jury. On the second phase we are
24 attempting to get a jury that also will go into that phase
25 with an open mind, that will not go in thinking, well, I'm
26 just automatically going to give a life sentence, or I'm
27 automatically going to give the death penalty. What we are
28 wanting a jury that can do is go in, say, okay, I'm waiting
29 to hear what y'all put on; listen to what both sides put on,

Individual Voir Dire - JURY OUT

1 and decide based on what the evidence is and what the Judge
2 says as to which penalty would be appropriate at that time,
3 and then reach the decision that they think is appropriate at
4 that time. Can you do that?

5 A. Yes, sir.

6 Q. In other words, can you go in not leaning one way
7 or the other, just listen to the evidence and then make your
8 decision after talking with the other jurors?

9 A. Yes, sir.

10 BY MR. EVANS: Nothing further, Your Honor.

11 BY MR. DE GRUY: Thank you, Your Honor.

12 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

13 Q. Ms. Wood, when the Judge first asked you the
14 question about whether you could consider a life sentence,
15 your answer, I think, was "I think I would consider both
16 options." And based on that, it sounds to me like maybe you
17 are leaning, you would be leaning towards the death penalty?

18 A. I understood him to say could I weigh and weigh all
19 the factors, etc. And I think I could be very -- that is
20 what I meant, that I -- well, yeah, I could weigh the
21 factors.

22 Q. You think that you could?

23 A. Uh-hum.

24 Q. And you are understanding that we don't get to that
25 phase -- the Judge has told you this case involves four
26 people being killed during a robbery?

27 A. Uh-hum.

28 Q. So you would never get to the second phase unless
29 you and eleven other jurors agreed beyond a reasonable doubt

Individual Voir Dire - JURY OUT

1 that Mr. Flowers was guilty of that?

2 A. I understand that.

3 Q. Okay. And so my question is at that point the
4 Judge and Mr. Evans have explained to you, there is another
5 stage of the proceedings. And it just sounded to me like
6 your answer was that you want to follow the procedure, and we
7 understand that you are a law-abiding person and that is how
8 come you got this far. But my question is and you are the
9 only one who can answer this; do you think it would be
10 difficult for you to consider knowing that we are talking
11 about the killing of four people during a robbery; would it
12 be difficult for you to consider anything other than the
13 death penalty?

14 A. No.

15 Q. You would have an open mind and be able to consider
16 whatever the Judge told you you should consider?

17 A. Yes.

18 BY MR. EVANS: She has answered that about three
19 times.

20 BY THE COURT: She has answered the question now.

21 BY MR. DE GRUY:

22 Q. And those, I just want to make sure you understand.
23 Those factors may not be factors that relate to the crime.
24 It may be things that from a Defendant's life before or after
25 the offense that you found him guilty on, and so I'm asking
26 those are the type of things when you say, I would consider
27 mitigating factors; you understand that mitigating factors
28 could be anything from a person's life?

29 BY MR. EVANS: Your Honor, I think that needs to

Individual Voir Dire - JURY OUT

1 be explained that it would be factors that the Court
2 says that could be explained.

3 **BY THE COURT:** Yeah, Ms. Wood. You know, I told
4 you I would give you that instruction that would have
5 those factors that the jury could consider, and I will
6 rule as to which mitigating factors you can consider.
7 It is going to probably be most of them, if not all of
8 them, but it will be a written instruction that will
9 have those things in there that the jury is allowed to
10 consider. The question is will you consider those?

11 **BY THE JUROR:** Yes, sir. And in answering it
12 before, I said think, I guess. But I hope that as I
13 hear the facts, that's my thing is that I have not, I
14 don't know. Never mind. I'm elaborating, but yes, I
15 would consider.

16 **BY THE COURT:** All right.

17 BY MR. DE GRUY:

18 Q. And that was my only question. You are willing to
19 listen to--

20 A. -- I am willing to listen to the facts, yes, and
21 form an opinion from that.

22 Q. Okay.

23 A. And make a decision.

24 Q. And when we say facts, it's not just about the
25 offense, but it could be other things?

26 A. I understand that.

27 Q. Okay, thank you.

28 **BY MR. DE GRUY:** That's all I have, Your Honor.

29 **BY THE COURT:** You may step down, Ms. Wood.

Individual Voir Dire - JURY OUT

1 (Juror 19, Ms. Wood, leaves the courtroom.)

2 **BY THE COURT:** What do y'all say? Any objection?

3 **BY MR. EVANS:** No.

4 **BY MR. DE GRUY:** No, Your Honor.

5 **BY THE COURT:** She stays. Michael Hudson.

6 (JUROR NO. 20, MR. MICHAEL TERRELL HUDSON, enters
7 the courtroom.)

8 INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. Would you state your name, please, sir.

10 A. Michael Hudson.

11 Q. Mr. Hudson, I believe you told me earlier in the
12 day that you had worked with Mr. Flowers; is that correct?

13 A. Yes, sir.

14 Q. Where was that?

15 A. Richardson Brothers Furniture Company.

16 Q. Okay. Have you heard anything about this case?

17 A. Yes, sir.

18 Q. How did you hear about it?

19 A. Hearsay.

20 Q. Street talk, gossip and that kind of stuff?

21 A. Yes, sir.

22 Q. How about news media and everything like that? Did
23 you hear about that, from that?

24 A. No, other than the radio station.

25 Q. Okay. Did you know any of the victims in this
26 case?

27 A. No, sir.

28 Q. Do you know any of their families?

29 A. No, sir.

Individual Voir Dire - JURY OUT

1 Q. Do you know -- you know Mr. Flowers because you
2 worked with him back in the early 90's; is that right?

3 A. Yes, sir.

4 Q. Okay. Do you know his family?

5 A. Yes, sir.

6 Q. Which ones of the family do you know?

7 A. Some of his other family members that worked at the
8 same factory with him.

9 Q. Okay. How long has it been since you have worked
10 with any of them?

11 A. About eight years.

12 Q. About eight years, okay. Based on what you have
13 heard and your relationship with the Defendant and his
14 family, have you formed any opinion about the guilt or
15 innocence of Mr. Flowers in this case?

16 A. (Pause) Yes, sir.

17 Q. Okay. Would that opinion keep you from being a
18 fair and impartial juror to both sides in this case?

19 A. No, sir.

20 Q. Okay. If you were selected as a juror, could you
21 sit in that jury box, listen to the evidence that comes from
22 the witness stand, take my instructions on the law at the end
23 of the case, apply them to facts as you see them, and then
24 discuss that with your fellow jurors and render a decision in
25 this case based on those factors and not from what you have
26 heard outside of court or from your relationship with the
27 Flowers family?

28 A. Yes, sir.

29 Q. Okay. Do you know of any reason you couldn't be

Individual Voir Dire - JURY OUT
1 fair and impartial in this case?

2 A. No, sir.

3 Q. Okay. The jury must first determine whether or not
4 he is guilty of anything, and they must do that unanimously,
5 and they must do it beyond a reasonable doubt. If they do
6 that, then the jury will be asked to decide the punishment.
7 At that stage of the trial, the State will put on evidence of
8 aggravating factors which would tend to warrant the death
9 penalty, and the Defendant would put on mitigating factors
10 which would be factors concerning Mr. Flowers' family and his
11 life and some other things like that, but all would be for
12 the purpose of saying that the death penalty shouldn't be
13 imposed. Do you understand that? That that is what the
14 procedure would be?

15 A. Yes, sir.

16 Q. Okay. I will give the jury a written instruction
17 that contains those factors and also have, describe the
18 procedure that the jury must go through in arriving at a
19 verdict. Do you understand that that would be, that that
20 would be the process?

21 A. (No response.)

22 Q. In other words, I will give you written -- if you
23 are on the jury, I am going to give a written instruction.
24 It will be in writing, and it will tell the jury what to do.
25 It won't tell you what verdict to come up with. It will just
26 tell you how you are to evaluate the aggravating
27 circumstances and mitigating circumstances and the procedure
28 involved in reaching some verdict. Do you understand that?

29 A. Somewhat, yes, sir.

Individual Voir Dire - JURY OUT

1 Q. Okay. At that point in the trial if I instruct you
2 that the law authorizes the death penalty and you find from
3 the evidence that the evidence warrants it, could you impose
4 the death penalty?

5 A. I don't think so. No, sir.

6 Q. All right. I really need for you -- and Mr.
7 Hudson, I appreciate that answer, but I have really got to
8 have a yes or no.

9 A. No, sir.

10 Q. You could not?

11 A. No, sir.

12 Q. Okay.

13 BY THE COURT: Mr. Evans.

14 BY MR. EVANS: Thank you, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. EVANS:

16 Q. Good evening, Mr. Hudson.

17 A. Good evening.

18 Q. A couple of different issues that I want to kind of
19 cover just a little bit more with you. Now to start with on
20 the death penalty part, this is a capital murder trial, so
21 the death penalty is one of the options if it gets to the
22 sentencing phase that the jury will have to consider. I take
23 it from what you are telling the Judge that you have pretty
24 strong opposition to the death penalty?

25 A. Yes, sir.

26 Q. And is that a religious or just a personal belief?
27 Or kind of both?

28 A. Both.

29 Q. Okay. And I understand that, and nobody is judging

Individual Voir Dire - JURY OUT

1 how you feel about it, but there are things that we do need
2 to know. Now because you have strong beliefs against the
3 death penalty, it may affect this particular case, and that's
4 why we go just a little further. The Judge kind of went in
5 detail with you. What we will do if this case gets to the
6 death penalty phase, we will be putting on evidence to the
7 jury to show the jury that the death penalty may be the
8 appropriate penalty. The Defense will be putting on evidence
9 to show that the life sentence may be the appropriate
10 penalty. What we need is a jury that can go in and actually
11 consider both of them, not to say automatically I would vote
12 life just because I don't believe in the death penalty or not
13 automatically say I will vote death because they don't
14 believe the other way. You understand what I'm saying?

15 A. Yes, sir.

16 Q. So I go through all that to get back to what the
17 Judge covered with you. If we get to that phase and you have
18 heard what we put on and you heard what the Defense puts on,
19 and the Judge tells you that in this case the death penalty
20 is authorized, and if the facts, you find that the facts in
21 this case justify the death penalty, I take it from what you
22 are saying that you yourself could not vote for the death
23 penalty even then?

24 A. Correct.

25 Q. Now before we ever even get to that phase, we have
26 got to try to have a jury that has no outside influences
27 about the case to try to determine the guilt or innocence
28 part. Now from what I understand that you have told the
29 Judge, you have worked with the Defendant, so you know him?

Individual Voir Dire - JURY OUT

1 A. (Juror nods his head.)

2 Q. You have worked with other family members of his
3 and know them. And you said that you already had an opinion
4 in this case as far as guilt or innocence; is that correct?

5 A. Yes, sir.

6 Q. Okay, taking all of that into consideration, the
7 fact that you already have an opinion, you have friendships
8 with his family and you have worked with his family--

9 A. --No, I just know them from passing, not -- I
10 haven't went into their homes or anything like that. Just
11 from passing.

12 Q. Okay. But taking all that into consideration and
13 the fact that you already have an opinion in this case, even
14 in the first phase don't you think that would enter into your
15 decision of guilt or innocence?

16 A. No, sir.

17 Q. Okay, so on the first phase you feel that you could
18 be fair and impartial. But on the second phase, you could
19 not vote for the death penalty even if the law authorized it
20 and the facts justified it?

21 A. Correct.

22 BY MR. EVANS: All right.

23 BY MR. DE GRUY: I have no questions, Your Honor.

24 BY THE COURT: You may step down, sir.

25 (Juror 20, Mr. Hudson, leaves the courtroom.)

26 BY THE COURT: I'm going to strike him for cause.
27 Any objection?

28 BY MR. EVANS: No, sir.

29 BY MR. DE GRUY: No, Your Honor.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** What did you do with Ms. Wood? Is
2 she back in the room?

3 **BY THE BAILIFF:** Right.

4 **BY THE COURT:** Okay, all right.

5 **BY MR. EVANS:** Your Honor, can I get a cup of
6 your water?

7 **BY THE COURT:** Yeah.

8 **BY MR. CARTER:** I have got to take some medicine
9 right quick.

10 (Mr. Carter leaves the courtroom.)

11 **BY THE COURT:** Carrie Flowers.

12 (JUROR NO. 21, MS. CARRIE A. FLOWERS, enters the
13 courtroom.)

14 INDIVIDUAL VOIR DIRE BY THE COURT:

15 Q. State your name, please.

16 A. Carrie Flowers.

17 Q. Ms. Flowers, have you ever heard anything about
18 this case?

19 A. Yes, I have.

20 Q. How did you hear that?

21 A. Just people around town.

22 Q. Just street talk, community talk?

23 A. Street talk, right, yeah.

24 Q. How about media coverage? Did you see any media
25 coverage or hear any radio coverage of it?

26 A. No.

27 Q. How long have you lived in this county?

28 A. Since '91.

29 Q. Okay. Did you, Ms. Flowers, did you know any of

Individual Voir Dire - JURY OUT

1 the victims?

2 A. No, sir. I didn't, not personally.

3 Q. Did you know any of their families, or do you know
4 any of their families?

5 A. No, sir. I don't.

6 Q. Do you know Mr. Flowers?

7 A. No, sir. I don't.

8 Q. Do you know his family?

9 A. No, sir. I don't.

10 Q. Based on what you heard in the community, have you
11 formed an opinion as to the guilt or innocence of Mr.
12 Flowers?

13 A. No, sir.

14 Q. All right. If you were seated as a juror in this
15 case, could you listen to the evidence that comes from the
16 witness stand, take my instructions on the law at the end of
17 the trial, consult with your fellow jurors, and then reach
18 your decision based on what you have heard here and in court
19 to the exclusion of what you might have heard on the streets
20 or out of court?

21 A. Yes, I could.

22 Q. Do you know of any reason that you could not be a
23 fair and impartial juror in this case?

24 A. No, I do not.

25 Q. Okay. I asked all the jurors this morning if they
26 had any religious or personal beliefs that were in opposition
27 to the death penalty, and you didn't respond. Do you have
28 such a belief?

29 A. No, I don't.

Individual Voir Dire - JURY OUT

1 Q. Okay. If you sat on this jury and at the first
2 phase would be a requirement that the jury determine the
3 guilt or innocence of Mr. Flowers. And if beyond, if during
4 that stage if they unanimously found beyond a reasonable
5 doubt that he was guilty and so returned a verdict, then we
6 would have a second phase which would be the sentencing
7 phase. And in that phase the jury would determine the
8 punishment, and the two punishments would be life or death,
9 would be life in the penitentiary or death.

10 At that phase there would be additional evidence.
11 The State would put on evidence in support of aggravating
12 factors which would be evidence that would tend to support
13 the imposition of the death penalty. The Defendant would put
14 on mitigating factors which could be a variety of type facts,
15 things about his life, his childhood, his mother and father,
16 or any other relatives and those type of things. That
17 evidence would be for the purpose of saying that no, that the
18 death penalty is not warranted; the life should be imposed.
19 Do you understand that?

20 A. Yes, I do.

21 Q. Okay. I would give the jury and will give the jury
22 if we get to that point, a written instruction that includes
23 those factors, those aggravating and mitigating factors that
24 the jury can consider, and it will also tell a procedure
25 about how the jury should weigh those things in arriving at
26 the verdict. Ultimately, it will be up to the jury to
27 determine whether or not, which penalty there would be. Do
28 you understand that part of it?

29 A. Yes, I do.

Individual Voir Dire - JURY OUT

1 Q. Okay. At that stage if I instructed you that the
2 law authorized the imposition of the death penalty and you
3 found from the evidence that the evidence warranted the death
4 penalty, could you impose the death penalty?

5 A. Yes, I could.

6 Q. Also at that stage, if after considering the
7 aggravating factors -- or at that stage would you consider
8 the aggravating circumstances and mitigating circumstances
9 and consider the life option, or would you automatically just
10 because he had been found guilty, find for death?

11 A. I could weigh the evidence and determine whether he
12 deserved life or death.

13 Q. You could determine both? You would be willing to
14 consider both options?

15 A. Consider both of them, right.

16 **BY THE COURT:** Okay, Mr. Evans.

17 **BY MR. EVANS:** Thank you, Your Honor.

18 INDIVIDUAL VOIR DIRE BY MR. EVANS:

19 Q. How are you doing, Ms. Flowers?

20 A. I am fine.

21 Q. I just want to go a little bit further into a few
22 of these things with you. You understand at this phase in a
23 trial the defendant is presumed to be innocent?

24 A. That's correct.

25 Q. And that is the way it should be because the burden
26 of proof is on the state to prove to the jury that he is
27 guilty. He doesn't have to prove anything. So at this phase
28 in a trial that presumption is there until we have proven his
29 guilt beyond a reasonable doubt. You understand that?

Individual Voir Dire - JURY OUT

1 A. Yes, I do.

2 Q. Now what we are attempting in the first phase to do
3 is to get a jury that can disregard anything that they have
4 heard about the case, come into the courtroom, sit as a juror
5 with a clean slate; come in here and say, okay, I'm going to
6 listen to the evidence. I will base my decision strictly on
7 the evidence I hear in the courtroom and the law the Judge
8 gives me. Can you do that?

9 A. Yes, I can.

10 Q. All right. Going on from that phase, if the jury
11 convicts in the first phase of capital murder, we go into a
12 second phase. In that phase, as the Judge told you, there
13 are two possible penalties. One is death and one is life.
14 What we are attempting to do in that phase is similar to the
15 first phase. We want to come in, the jury to come in with a
16 clean slate again, and say okay, he is guilty; now we are
17 going to look at the evidence and determine which penalty is
18 appropriate.

19 And the way that will work, we will be putting on
20 evidence to the jury that is called aggravating
21 circumstances. That will be in an attempt to show the jury
22 that the death penalty is the appropriate penalty. The
23 Defense will be putting on mitigating circumstances, and it's
24 no way to describe it, but basically that can be anything
25 about the Defendant's life. It may be something about when
26 he was in grammar school. It may be anything related to his
27 life, and what they will be doing is attempting to show the
28 jury that in this particular case the death penalty is not
29 appropriate; a life sentence is. Do you understand that?

Individual Voir Dire - JURY OUT

1 A. Uh-hum.

2 Q. The Judge, when we both get through, the Judge will
3 instruct the jury as to what they are to consider before
4 reaching a decision. The Judge will even give pretty well
5 detailed instructions on what steps a juror must follow to
6 reach a decision. In an attempt to have a jury that comes in
7 with an open mind, it is important to have a jury that is not
8 leaning toward a life sentence or leaning toward the death
9 penalty, but will come in and base their decision strictly on
10 the facts that we present and that they present and the law
11 the Judge gives. Can you tell us that in that phase if you
12 were picked as a juror, you would listen to both sides, weigh
13 the evidence, and make a decision after consulting with your
14 other jurors based upon what you hear in court?

15 A. Yes, I could.

16 **BY MR. EVANS:** Nothing further, Your Honor.

17 **BY MR. DE GRUY:** Thank you, Your Honor.

18 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

19 Q. Ms. Flowers, you told us that you have heard some,
20 I think you said street talk and gossip--

21 A. Right.

22 Q. -- about the case. Could you tell us what it is
23 you heard about the case?

24 A. Well, the little Stewart boy that was killed was a
25 friend of a family member of ours. And just hearsay, you
26 know, just that he was shot basically.

27 Q. And who is the family member?

28 A. Jack and Barbara Flowers. Jason Mills worked for
29 them for a while, and he was friends with the little Stewart

Individual Voir Dire - JURY OUT

boy.

Q. Did you ever meet BoBo Stewart?

A. Never met him.

Q. And how close are you to this family member?

A. That is my mother-in-law and father-in-law.

Q. Okay, so--

A. The little Mills boy worked for them. That's what I meant to say, that he worked for them, and he was friends with the little Stewart boy.

Q. Do you know the Mills boy also?

A. Yes, I do.

Q. And is he a friend of the family's?

A. Yes, he is.

Q. Has he visited in your house?

A. Yeah. Long time ago when the kids were little.

Q. So is he the age of your kids?

A. Right, he was. Uh-huh. Yeah, he is.

Q. And are your children -- so were your children friends with BoBo Stewart also?

A. They are my stepchildren. They could have been in their earlier years. I didn't get them until they were like nine and seven years old. So if they were earlier -- from that time on, not that I know of.

Q. But the Mills boy is friends with your stepchildren?

A. Yes, he was. He is.

Q. And he has visited in your home, and y'all have discussed that BoBo Stewart was killed?

A. No. I mean he didn't come into my home and we

Individual Voir Dire - JURY OUT

1 discussed it. I mean he just, like my in-laws and stuff; we
2 were there. They talked about it, but I have never been in
3 any discussion with anyone about it basically because I'm not
4 very familiar with a lot of people from here.

5 Q. So the discussions were just about that it had
6 happened?

7 A. Right. Right.

8 Q. And were, was there anybody in these discussions
9 expressing an opinion of the guilt or innocence of Mr.
10 Flowers?

11 A. No, we didn't really discuss him, you know, discuss
12 guilt of anyone, just what happened, just basically what
13 happened. We didn't really talk about he was guilty or
14 whatever.

15 Q. Were there ever any discussions of what should
16 happen, what punishment would be appropriate?

17 A. No.

18 Q. When was the last time you saw the Mills boy, Mr.
19 Mills?

20 A. Oh, it has been years.

21 Q. Been years?

22 A. Five or six years, yeah.

23 Q. So he is not, doesn't visit your home often?

24 A. No, uh-uh.

25 BY MR. DE GRUY: That's all I have, Your Honor.

26 BY THE COURT: You may step down.

27 BY THE JUROR: Okay. Thank you.

28 (Juror 21, Ms. Flowers, leaves the courtroom.)

29 BY THE COURT: Any objection to her?

Individual Voir Dire - JURY OUT

1 BY MR. EVANS: No, sir.

2 BY MR. DE GRUY: No, Your Honor.

3 BY THE COURT: She goes to the room. Pamela
4 Hammond.

5 (JUROR NO. 22, MS. PAMELA B. HAMMOND, enters the
6 courtroom.)

7 INDIVIDUAL VOIR DIRE BY THE COURT:

8 Q. State your name, please, ma'am.

9 A. Pam Hammond.

10 Q. Ms. Hammond, have you ever heard anything about
11 this case?

12 A. I have.

13 Q. And how did you get that information?

14 A. I have lived in Winona forever.

15 Q. So you have heard a lot of talk about it?

16 A. Sure.

17 Q. And I assume then that you have seen the media
18 coverage of this too; is that correct?

19 A. I have.

20 Q. All right. Did you know the victims?

21 A. Very well.

22 Q. How many of them? All of them or?

23 A. I taught BoBo Stewart. I'm a teacher here at the
24 public school, and I am a member of the Methodist Church. So
25 I was in church with Ms. Tardy, and I am life long friends
26 with her daughter Roxanne.

27 Q. Okay. Based on all that, Ms. Hammond, have you
28 formed an opinion as to the guilt or innocence of Mr.
29 Flowers?

Individual Voir Dire - JURY OUT

1 A. I have.

2 Q. Would that opinion keep you from being a fair and
3 impartial juror for both sides?

4 A. It would.

5 Q. Okay.

6 BY THE COURT: Any questions, gentlemen?

7 BY MR. EVANS: No, sir.

8 BY MR. DE GRUY: No, Your Honor.

9 BY THE COURT: Thank you, Ms. Hammond.

10 (Juror 22, Ms. Hammond, leaves the courtroom.)

11 BY THE COURT: I'm going to strike her for cause.
12 Any objection?

13 BY MR. EVANS: No, sir.

14 BY MR. DE GRUY: No, sir.

15 BY THE COURT: Stanley Booker.

16 (JUROR NO. 23, MR. STANLEY BOOKER, enters the
17 courtroom.)

18 INDIVIDUAL VOIR DIRE BY THE COURT:

19 Q. How are you doing?

20 A. All right.

21 Q. State your name, please, sir.

22 A. Stanley Booker.

23 Q. Mr. Booker, have you ever heard anything about this
24 case?

25 A. Yes, sir.

26 Q. How did you get your information?

27 A. Seeing it in the newspaper one time.

28 Q. Okay, did you ever hear about it on the radio or
29 see it on television?

Individual Voir Dire - JURY OUT

1 A. A little bit on the television.

2 Q. Did you know any of the victims in this case?

3 A. No. I went to the store years ago when I was
4 small.

5 Q. Okay. Did, or do you know any of the victims'
6 families?

7 A. No, sir.

8 Q. Do you know Mr. Flowers?

9 A. No, sir.

10 Q. Do you know any of his family?

11 A. Um, I really can't say if it's a cousin or
12 anything. I went to school with Terry Flowers.

13 Q. Okay. Which part of the county do you live in,
14 Mr. Booker?

15 A. Montgomery County.

16 Q. I mean which part of Montgomery County?

17 A. Duck Hill.

18 Q. Duck Hill, okay. Mr. Booker, based on what you
19 have heard, have you formed an opinion as to the guilt or
20 innocence of Mr. Flowers?

21 A. No. No, sir. I haven't.

22 Q. Okay. If you were seated as a juror in this case,
23 could you listen to the evidence that comes from the witness
24 stand, take my instructions on the law, apply them to the
25 facts as you see them, and then discuss that with your fellow
26 jurors and reach a decision based on what that evidence was
27 and those discussions to the exclusion of what you might have
28 heard outside of court?

29 A. Yes. I believe I can.

Individual Voir Dire - JURY OUT

1 Q. Mr. Booker, do you know of any reason you couldn't
2 be fair and impartial?

3 A. No.

4 Q. Okay. Mr. Booker, I asked the jurors this morning
5 if they had any religious or personal beliefs against the
6 death penalty. You did not respond. Does that mean that you
7 do not have any personal or religious beliefs that would
8 prohibit you from imposing the death penalty?

9 A. No, I wouldn't.

10 Q. Okay. Mr. Booker, the first phase of the trial
11 would be to determine only the guilt or innocence of -- well,
12 it will only determine the guilt of Mr. Flowers. The jury
13 would have to find unanimously at that time beyond a
14 reasonable doubt that he was guilty of this before the trial
15 would go any further. If they did that, then we would have a
16 second phase which would be only the penalty phase, and it
17 would be for the jury to consider the two penalties available
18 which would be life in prison or the death penalty. At that
19 phase the State would put on additional evidence to try to
20 prove aggravating circumstances which would warrant the death
21 penalty. The Defendant would put on evidence of mitigating
22 factors which would tend to work against the death penalty
23 and in favor of the life sentence. Do you understand that?

24 A. Yes, I do.

25 Q. I will give the jury a written instruction that
26 will contain those aggravating factors and also contain those
27 mitigating factors, and it will also have some instructions
28 on how the jury is to evaluate those and arrive at their
29 verdict, although in the long run the jury must do that and

Individual Voir Dire - JURY OUT

1 make those evaluations and arrive at a verdict of either
2 death or life. Do you understand that?

3 A. Yes, I do.

4 Q. If I instructed you at the end of the trial that
5 the law authorized the imposition of the death penalty and
6 you found from the evidence that the evidence warranted the
7 death penalty, could you impose it?

8 A. I believe I can.

9 Q. All right, sir.

10 **BY THE COURT:** Mr. Evans.

11 **BY MR. EVANS:** Thank you, Your Honor.

12 INDIVIDUAL VOIR DIRE BY MR. EVANS:

13 Q. How are you doing, Mr. Booker?

14 A. I am doing okay.

15 Q. I just want to go through a few things with you.
16 So as far as you know, you don't know the Defendant?

17 A. No, I don't.

18 Q. And you don't know any of his family that you are
19 aware of other than maybe a cousin?

20 A. Yeah.

21 Q. How about that cousin? Are y'all close friends?

22 A. Uh, played football together.

23 Q. You still see each other, or is it just something
24 in the past?

25 A. I haven't seen him in years.

26 Q. Okay. Now I don't know if we went over this when
27 you were in the courtroom this morning or not. But I know he
28 is related to a lot of the Forrests in the community, a lot
29 of the Campbells in the community. You know, for example,

Individual Voir Dire - JURY OUT

1 Nelson Forrest, the supervisor, and his family are going to
2 be related to him. As a matter of fact, he may end up being
3 a witness that testifies in the second phase, if we go to
4 that phase, for him. Do you know any of them?

5 A. No, I don't.

6 Q. Okay, is there anything about any connections that
7 you know of with anyone in the community that would keep you
8 from being a fair and impartial juror in this case?

9 A. No.

10 Q. What we're attempting to do in the first phase is
11 to get a jury that can sit in the jury box, listen to the
12 evidence and base a decision strictly on the evidence that
13 they hear and not any outside influence. Can you tell us
14 that you could do that; you could come in, and you could
15 listen to the evidence in court, and you could be fair and
16 impartial to both the State of Mississippi and to the
17 Defendant, listen to the evidence, and reach a fair verdict
18 based upon the evidence of the case?

19 A. Yeah, I can.

20 Q. Okay. Now going a step further, if the jury
21 convicts the Defendant of capital murder, then we go into a
22 second phase. In that phase there are two possible
23 penalties. The jury is the one that decides the penalty.
24 One of those penalties--

25 **BY MR. CARTER:** -- Your Honor, just for the
26 record, I would like to object. You have already
27 asked him this question that Mr. Evans is about to ask
28 him.

29 **BY MR. EVANS:** May I proceed, Your Honor?

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** I'm going to allow it right now.

2 BY MR. EVANS:

3 Q. One of those penalties is death. One of those
4 penalties is life. The way we will get to that is we will be
5 putting on evidence to show the jury that the death penalty
6 is the appropriate penalty in this case. Once we do that,
7 the Defense will put on evidence. What they will be putting
8 on is facts to justify a life sentence. And the way they
9 will be doing that is putting on what is called mitigating
10 circumstances. It can be anything about the Defendant's
11 life. The Judge can limit it, but he will probably let in
12 almost anything they want to put on, stuff like things that
13 he may have done in grammar school even, things like that.
14 He may put on family members, may put on people in the
15 community to ask the jury to consider a life sentence.

16 I tell you all this so that you will understand how
17 the process works. Just as in the first phase we want to get
18 jurors that are fair and impartial to both sides; in the
19 second phase we do too. We don't want to have a juror that
20 is going to say okay, I can sit and I can judge guilt, but
21 I'm going to automatically vote for a life sentence if it
22 gets to that part; or no, I'm going to automatically vote for
23 the death penalty if it gets to that part. Do you understand
24 what I'm saying?

25 A. Yeah.

26 Q. Can you tell us that if it gets to the second phase
27 and you are picked as a juror, that you will listen to both
28 sides and base your decision of which penalty it should be on
29 the evidence that comes out in court and nothing else?

Individual Voir Dire - JURY OUT

1 A. Yeah, I believe I can.

2 Q. Okay. And following up on that, if you are picked
3 as a juror and the Judge instructs you that the law
4 authorizes the death penalty in this case and if the facts
5 justify it, could you yourself vote for the death penalty?

6 A. Possible.

7 Q. And I need more than possible. I not asking you at
8 this point would you vote for the death penalty in this case.
9 I'm just asking you if the law authorized it and the facts
10 justified it, could you yourself vote for the death penalty?

11 A. Yeah, I could.

12 Q. Okay, would you be leaning toward a life sentence?

13 A. I really can't answer that question. I mean you
14 asked me to answer would I bid on the death penalty. Now you
15 are asking me about the life sentence.

16 Q. Right.

17 A. I mean I could say yes, I could, I could lean
18 towards a life sentence, and yes, I could lean towards the
19 death penalty. So the answer, to answer your question, I
20 could do both.

21 Q. Okay. So is your answer then you wouldn't lean
22 either way, but you would listen to the evidence and base
23 your decision on the evidence?

24 A. That's correct.

25 Q. Okay. That's what I'm trying to get at.

26 BY MR. EVANS: No further questions.

27 BY MR. DE GRUY: I have no questions.

28 BY THE COURT: All right. You may step down,
29 Mr. Booker.

Individual Voir Dire - JURY OUT

(Juror 23, Mr. Booker, leaves the courtroom.)

BY THE COURT: Any objection to him for cause?

BY MR. EVANS: No, sir.

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: Let me see y'all up here just a second.

(CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE AUDIENCE:)

BY THE COURT: Mr. Carter raises an interesting question which I have been asking myself now for quite some time. I'm going over all this procedure with these folks and how it's done, what their feelings are. I'm going through all the Witherspoon stuff, and when they are coming up with answers that are favorable to the State, I don't understand why you are going back through that again.

BY MR. EVANS: Your Honor, the reason I am is because I'm afraid that once the Defense goes in it, if they change what they have said, the Court may not let me go back into it with them.

BY THE COURT: Well, by the time I have asked the question, it is up to him then -- if they have answered it that way, his job is to rehabilitate the witness, which he is entitled to do, in which case you would always be able to come back after that.

BY MR. EVANS: Okay, I have no--

BY THE COURT: -- You would agree with that, wouldn't you, Mr. de Gruy?

BY MR. DE GRUY: Yes.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** That he has another--

2 **BY MR. EVANS:** -- I have no problem.

3 **BY THE COURT:** Okay. Well, that will save us
4 some time if we can do that.

5 **BY MR. EVANS:** Some of them haven't been real
6 clear one way or the other when the Court did that.

7 **BY THE COURT:** And I understand that. But let's
8 try not to repeat everything I do especially when they
9 are -- well, you know, y'all know what I'm talking
10 about.

11 END BENCH CONFERENCE

12 **BY THE COURT:** George Phillips.

13 (JUROR NO. 24, MR. GEORGE PHILLIPS, enters the
14 courtroom.)

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. State your name, please, sir.

17 A. George Phillips.

18 Q. Mr. Phillips, have you ever heard anything about
19 this case?

20 A. No more than just normal.

21 Q. Street talk?

22 A. Radio and street talk.

23 Q. Okay. Where in the county do you live?

24 A. Montgomery.

25 Q. I know that, but what part of Montgomery?

26 A. Just north Montgomery County.

27 Q. Up toward Duck Hill?

28 A. Right. About 2 miles out of town.

29 Q. Two miles out of Winona?

Individual Voir Dire - JURY OUT

1 A. Right.

2 Q. Okay. And you have heard about it on the radio?

3 A. (Juror nods his head.)

4 Q. How about television?

5 A. That's right.

6 Q. How about the newspaper?

7 A. No. I ain't read--

8 Q. -- Just radio and television?

9 A. That's right.

10 Q. And you have heard street talk about it; is that
11 right?

12 A. That's right.

13 Q. Did you know any of the victims?

14 A. Yeah, I knew them.

15 Q. Who did you know?

16 A. I know Robert.

17 Q. Okay, did you--

18 A. --I knew Ms. Bertha too because we did business
19 with her.

20 Q. You did business with Ms. Tardy?

21 A. Right.

22 Q. Okay. Did you know or do you know their families?

23 A. No, not really.

24 Q. Okay, you didn't know any of Mr. Golden's family?

25 A. Oh, yeah, I knew, I knew some of his family.

26 Q. Okay. Have you ever discussed this matter with
27 them or had it discussed in your presence?

28 A. Well, I talked with him.

29 Q. Talked with who?

Individual Voir Dire - JURY OUT

1 A. Willie George. His brother.

2 Q. You talked with his brother?

3 A. Right.

4 Q. Okay. How long ago was that?

5 A. I don't know. I guess when it first happened, I
6 reckon.

7 Q. Okay. Based on what you have heard and based on
8 that conversation, have you formed an opinion as to the guilt
9 or innocence of Mr. Flowers?

10 A. No, I really haven't.

11 Q. If you were selected on the jury, could you sit in
12 the jury box over there and listen to the evidence that comes
13 from the witness stand, take my instructions on the law at
14 the end of the case, apply them to the facts and then discuss
15 that with your fellow jurors and arrive at a decision based
16 on what you had heard here in court to the exclusion of what
17 you had heard outside of court including your conversations
18 with Mr. Golden's brother?

19 A. I really, I could, I reckon.

20 Q. Is there any reason you couldn't be fair and
21 impartial on this case?

22 A. I could be fair, but I don't, I don't care -- I'm
23 not, I don't believe in the death penalty.

24 Q. Okay, well, I'm going to get to that in just a
25 minute. But you could be fair and impartial except for that
26 part of it; is that right?

27 A. I believe I could listen and hear the evidence.

28 Q. If you were on this jury and the jury unanimously
29 found beyond a reasonable doubt that he was guilty, then we

Individual Voir Dire - JURY OUT

1 would go to a second phase. In that second phase the State
2 of Mississippi would put on evidence of aggravating
3 circumstances which would tend to weigh toward the death
4 penalty. The Defendant would then put on evidence of
5 mitigating circumstances which would weigh toward the
6 imposition of life, which are the only two options you would
7 have, death or life. I would also give a written instruction
8 along those lines which would contain those factors and tell
9 the jury how they are to consider those factors in reaching a
10 verdict. Ultimately, the jury would have to make those
11 decisions themselves, but there would be some instructions on
12 the procedure that you had to go through. You understand all
13 that, that that is what would happen at that phase?

14 A. (Juror nods his head.)

15 Q. All right, sir. If I instructed you at that phase
16 that the law authorized the death penalty or authorized the
17 imposition of the death penalty and you found from the
18 evidence that the evidence warranted the imposition of the
19 death penalty, could you impose it?

20 A. I don't believe I could. I just don't believe in
21 it.

22 Q. You just don't believe in it?

23 A. No.

24 Q. Is that a religious belief or just a personal
25 belief?

26 A. Really, you don't really know all the facts in a
27 case because some have been, you know, I done heard on
28 television that they are on death row and they really didn't
29 do it.

Individual Voir Dire - JURY OUT

1 Q. Stuff up in Illinois and stuff like that?

2 A. Well, I mean I just heard it over, and I just
3 don't, I just think I wouldn't go the death penalty.

4 Q. Okay, thank you, sir.

5 BY THE COURT: Mr. Evans.

6 BY MR. EVANS: I reserve the right to go into
7 that.

8 BY MR. DE GRUY: Just very briefly.

9 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

10 Q. Mr. Phillips, you are saying that your concerns
11 about the death penalty are possible, possibly an innocent
12 person would be sentenced to death?

13 A. That's correct.

14 Q. If you sat on a jury and found someone guilty
15 beyond a reasonable doubt, do you think at that point you
16 could consider the death penalty?

17 A. To me, it's if you didn't see it, it is always some
18 doubt there. That is to me now. I mean don't make no
19 difference what you hear.

20 BY MR. DE GRUY: Okay, I have no other questions.
21 Thank you.

22 BY THE COURT: Thank you, Mr. Phillips. You may
23 step down.

24 (Juror 24, Mr. Phillips, leaves the courtroom.)

25 BY THE COURT: Okay, I'm going to excuse him for
26 cause. Any objection?

27 BY MR. EVANS: No, sir.

28 BY MR. DE GRUY: No, Your Honor.

29 BY THE COURT: We are going to take a short

Individual Voir Dire - JURY OUT

1 break.

2 (FOLLOWING THE AFTERNOON RECESS ON FEBRUARY 4,
3 2004, INDIVIDUAL VOIR DIRE CONTINUED IN OPEN COURT WITH ALL
4 COUNSEL AND THE DEFENDANT PRESENT:)

5 BY THE COURT: Okay, Ms. Billingsley.

6 (JUROR NO. 25, MS. BETTY JANE BILLINGSLEY, enters
7 the courtroom.)

8 INDIVIDUAL VOIR DIRE BY THE COURT:

9 Q. Would you state your name, please, ma'am.

10 A. Betty Jane Billingsley.

11 Q. Ms. Billingsley, have you ever heard anything about
12 this case?

13 A. Yes.

14 Q. How did you hear that?

15 A. It was news in Winona in 1996 when it happened.

16 Q. Then you heard some community talk?

17 A. Sure.

18 Q. Gossip, that kind of thing; is that right?

19 A. Yes.

20 Q. Did you hear about it by virtue of the news media?

21 A. Initially, no. A friend called me and told me.

22 Q. Since then, have you heard something on the radio
23 or television or newspaper about it?

24 A. Through the years.

25 Q. Did you know any of the people that were at the
26 furniture store, the victims?

27 A. I knew all the victims.

28 Q. All of them?

29 A. Knew all of them. Uh-hum.

Individual Voir Dire - JURY OUT

1 Q. All right. Were you personal friends with any of
2 them?

3 A. Yes. I guess you would consider--

4 Q. Which ones?

5 A. Bertha Tardy and I went to church together. BoBo
6 played baseball with my son.

7 Q. Okay.

8 A. I knew Ms. Rigby by just seeing her on the street
9 as an acquaintance. And Mr. -- I can't remember his name.

10 Q. Golden?

11 A. Golden. I taught his son in kindergarten.

12 Q. Okay. Do you know any of the victims' families?

13 A. Yes.

14 Q. Have you ever discussed this matter with them or
15 had them discuss it in your presence?

16 A. Not in detail, just general, you know.

17 Q. All right, who did you discuss it with?

18 A. Roxanne Ballard.

19 Q. Are you good friends with her?

20 A. We are friends. I teach her son.

21 Q. Okay.

22 A. I'm his sixth grade reading teacher.

23 Q. Do you know Mr. Flowers?

24 A. No.

25 Q. Do you know any of his family?

26 A. Not that I know of.

27 Q. When you talked to Ms. Ballard, did she, she talked
28 to you about the facts of the case, I guess, did she not?

29 A. It has been a while. I mean it's -- not really.

Individual Voir Dire - JURY OUT

1 Just the hardship that the family has been through through
2 the years. I am sure it-- nothing, nothing specific that I
3 could tell you.

4 Q. Did she ever talk to you about Mr. Flowers?

5 A. No, not specifically, no.

6 Q. Okay. Based on what you have heard or read or your
7 conversations with anybody or the community talk that you
8 have heard, have you formed an opinion as to the guilt or
9 innocence of Mr. Flowers?

10 A. (Pause.) I thought that he had been found guilty
11 previously.

12 Q. Okay, so you know about that?

13 A. Oh, sure.

14 Q. Would that affect you to the point to where you
15 couldn't be fair and impartial in this case?

16 A. I don't think so.

17 Q. You don't think -- what do you mean by that?

18 A. I don't think it would affect me that he had
19 already been found guilty.

20 Q. Okay. Based on these other things though that you
21 have heard -- I don't know whether it got to the point to
22 whether you told me whether or not you had an opinion as to
23 his guilt or innocence?

24 A. That's a hard question. When I heard that he was
25 previously found guilty, of course, I thought he was guilty
26 from that ruling. Personally, if I knew that he was guilty
27 by knowing that he did it, I could not tell you that I knew,
28 you know, that I myself knew that he was guilty. Does that
29 make sense?

Individual Voir Dire - JURY OUT

1 Q. No, ma'am. I don't understand you.

2 A. I mean when I hear that the court has found an
3 individual guilty, you know, I assume that the court has
4 found the right verdict. But my, me myself knowing from the
5 evidence presented in a trial or from evidence that I have
6 heard or whatever that he was guilty, I cannot say that I
7 knew that he was guilty from my own knowledge of the events
8 that took place.

9 Q. Okay. My question to you, Ms. Billingsley, is
10 this; because of all those things and because you know about
11 the other trials and the outcome of them, would it affect,
12 would it affect your ability to be fair and impartial in this
13 case, or would those things affect you?

14 A. No.

15 Q. They would not?

16 A. No.

17 Q. If you sat on a jury, could you listen to the facts
18 that come in from the witness stand, take the law at the end
19 of the case, and apply that to the facts as you see them,
20 then discuss that with your fellow jurors, and base your
21 decision on those facts and that law and those discussions to
22 the exclusion of what you may have heard and to specifically,
23 the exclusion of any conversations you have had with
24 Ms. Ballard and to the exclusion of any relationships you
25 might have had with these people?

26 A. Yes. I think I can.

27 Q. Do you know of any reason that you could not be
28 fair and impartial?

29 A. My relationship with the Ballard family, being

Individual Voir Dire - JURY OUT

1 instruction that included those factors and tell the jury the
2 procedure that you go through in evaluating those factors and
3 the procedure you go through in reaching a verdict, although
4 in the outcome, ultimately the jury makes that decision as to
5 whether it's life or death. Do you understand that that
6 would be the procedure?

7 A. Yes, uh-huh.

8 Q. All right. If we get to that point, I will
9 instruct you that the law has authorized or authorizes in
10 this case an imposition of the death penalty. And if I do
11 that and you find that the evidence warrants that, such a
12 penalty, could you vote for the death penalty?

13 A. Yes.

14 Q. Okay. If after going through all that and
15 listening to that evidence and weighing those factors and
16 reading my instructions on the law, when it came time to
17 decide between those two things, could you also consider both
18 options, the life and the death option?

19 A. Yes.

20 Q. Would you automatically just impose the death
21 penalty because you had found him guilty or because of the
22 nature of crime?

23 A. No.

24 **BY THE COURT:** Mr. Evans.

25 **BY MR. EVANS:** Thank you, Your Honor.

26 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

27 Q. How are you doing this evening?

28 A. I'm fine.

29 Q. I just want to go into a little more detail on a

Individual Voir Dire - JURY OUT

1 few of these things. Now you understand at this phase in
2 this trial or any trial, this Defendant is presumed to be
3 innocent by law?

4 A. Yes.

5 Q. And that is because the burden of proof is on the
6 State of Mississippi through the District Attorney's Office
7 to prove to the jury that sits in this box over here beyond a
8 reasonable doubt from evidence that we bring forth in court
9 that he is, in fact, guilty beyond a reasonable doubt. You
10 understand that?

11 A. Yes, sir.

12 Q. The Defendant doesn't have to prove anything. The
13 whole burden is on us. So what that means is that a jury
14 that is picked on this case would have to come into the
15 courtroom with an open mind, disregard anything that they may
16 have heard about the case, and I think everybody that is up
17 here has heard something. So we are trying to find a jury
18 that can completely disregard anything that they have heard,
19 come into the courtroom and say okay, I'm not going to base
20 my decision on anything except what I hear in the courtroom
21 and what law that the Judge gives me. Can you do that if you
22 are picked as a juror?

23 A. Yes, I can.

24 Q. Now going a step further, that is for the first
25 phase or guilt or innocence phase. If the jury finds the
26 Defendant is guilty, then we go into a second phase. In that
27 phase, as the Judge has gone through with you, each side can
28 put on additional evidence. One side, our side would be
29 arguing for the death penalty. Their side would be arguing

Individual Voir Dire - JURY OUT

1 for a life sentence. We expect that the Judge would tell you
2 that you should balance all of those, and the Court will
3 explain to you how you are to look at the aggravating
4 circumstances and the mitigating circumstances. The
5 mitigating circumstances, as have been described earlier,
6 probably won't have anything to do with the facts of the
7 case. They will have to do with his life. You may hear
8 something from when he was in grammar school. You may hear
9 family members that talk about different things. But the
10 Court will tell you that you are to look at all of those
11 factors before you make a decision of whether the penalty
12 should be death or life. Can you tell us that before you
13 would consider which penalty would be appropriate, that you
14 will follow the Court's instructions, listen to the things
15 that the State puts on, the things that the Defense puts on,
16 and then reach a decision as to which penalty should be
17 appropriate?

18 A. Yes, I can.

19 Q. Now I understand from your questionnaire that you
20 and maybe your husband both do prison ministry?

21 A. No. My father-in-law.

22 Q. Your father-in-law?

23 A. And my mother-in-law are involved.

24 Q. And your mother-in-law. Is there anything about
25 the fact that they do prison ministry that would make it more
26 difficult for you especially in the sentencing phase to reach
27 a decision in that phase?

28 A. No.

29 Q. Nothing would influence your ability to be fair and

Individual Voir Dire - JURY OUT

1 impartial in both phases and reach a decision on what you
2 hear in the courtroom?

3 A. That's correct.

4 BY MR. EVANS: That's all, Your Honor.

5 BY MR. DE GRUY: Thank you, Your Honor.

6 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

7 Q. Ms. Billingsley, I hate to ask about this, but I
8 think when you were out there, you said that your brother had
9 been murdered?

10 A. Yes. And I need to clarify that just a little bit.

11 Q. Okay.

12 A. My brother was involved in a drug overdose that it
13 was questionable that the other man that was with him
14 murdered him. And they did go to trial, but they did not
15 find the man guilty of murder. My family felt like it was
16 murder or Bobby overdosed himself. I just happened to be the
17 one that had to go to that trial, and you know, testify on
18 behalf of my brother's, you know, family, identify him, and
19 whatever. As far as being murdered by another person, it
20 wasn't free and clear of his own actions as well.

21 Q. And how long ago was that?

22 A. That was in 1997. October.

23 Q. Now it's just -- it is common for people who have
24 been through traumatic experiences to comfort each other.

25 A. Sure.

26 Q. And you were aware of the similar tragedy that
27 Ms. Ballard had. Did y'all have any discussions about your
28 shared experience over the years?

29 A. I don't remember any in particular ones; just

Individual Voir Dire - JURY OUT

1 acknowledging loss of loved ones, you know.

2 Q. So you said that y'all were discussing the
3 hardship?

4 A. Yes.

5 Q. On her family?

6 A. Well, yes.

7 Q. That y'all were discussing the hardship on each of
8 you?

9 A. Right.

10 Q. So it would be fair to say you were comforting each
11 other?

12 A. Sure.

13 Q. Now it would be natural in such circumstances to
14 have a, for lack of a better word, a bonding between people
15 who are sharing this type of experience.

16 A. (Pause) I would, I guess you would call it
17 compassionate toward someone that has lost someone in a
18 tragedy like this. As she was me or, you know, anyone else
19 that has lost someone in a sudden death, unexpected death
20 like this.

21 Q. And it would have made y'all closer than just
22 attending church together?

23 A. Not really. I mean we are not friends that go over
24 and visit with each other in homes or anything like that.

25 Q. It's not a social--

26 A. No.

27 Q. --friendship? It is more of a friendship built on
28 this common experience?

29 A. Not on that common experience. Just being members

Individual Voir Dire - JURY OUT

1 of the same church, and like I said, I teach her son, you
2 know, things like that. Business. I mean I know her
3 socially, but it's not one that -- we don't visit or anything
4 like that.

5 Q. Your association is more limited to your common
6 experience, both in teaching her son as a teacher and parent
7 and as the, each of you has suffered a similar tragedy in
8 your life?

9 A. I would say teaching her son and church more than
10 the common experience.

11 Q. Okay. And you have expressed how difficult it was.
12 The burden was on you to go to the trial in New Orleans?

13 A. Sure.

14 Q. And that was a burden on you--

15 A. It was.

16 Q. -- to make that identification. And you understand
17 that in a murder trial things like identification and having
18 to look at pictures, that that is something that a juror
19 would have to do?

20 A. Yes.

21 Q. And do you think that emotionally that is something
22 you would be able to handle?

23 A. I don't know. I have never had to do that before.
24 And I didn't have to identify my brother's body as a dead
25 person. I had to, you know, just identify him in a picture
26 when he was living. So, you know, I didn't see any evidence
27 in the trial or anything. It was just a one day trial of
28 trying to see if this other person was at fault.

29 Q. And that limited experience was difficult for you?

Individual Voir Dire - JURY OUT

1 A. Of course.

2 Q. And so that is what, now we are talking about you
3 having to sit for days and listen to evidence concerning the
4 death of a person that you had discussed these hardships with
5 her, and so I'm asking is do you think that that is something
6 that would be on your mind?

7 A. No. And I thought that this was the trial for BoBo
8 Stewart, not the other victims. Am I wrong?

9 **BY THE COURT:** It is all four.

10 **BY THE JUROR:**

11 A. Is it all four?

12 Q. It is all four.

13 A. Okay.

14 Q. So knowing that fact, does that cause you some
15 concern about your abilities to--

16 A. Sure, it does.

17 Q. Okay. So knowing that fact now, do you feel like
18 maybe you would not be a fair juror?

19 A. I think that I could be a fair juror. I think it
20 would be hard on any person to sit, and I don't think because
21 of my brother's death, it would be any harder on me than any
22 other person. That is just not related to me for this.

23 Q. Okay. And you feel like, you know, obviously it
24 would be hard for anybody to sit through and serve on a jury,
25 but do you feel like your unique experience of being a friend
26 of Ms. Ballard and discussing specifically how this tragedy
27 affected her, do you think that you can put those discussions
28 aside, those shared feelings aside, and just listen to the
29 facts?

Individual Voir Dire - JURY OUT

1 A. Being that we have not discussed it in a year or
2 more, I don't think that it would interfere with my decision
3 listening to the evidence of the case.

4 Q. And so you are telling us that you could listen to
5 the evidence, go back in the jury room, and deliberate based
6 on the evidence, not being affected by your personal
7 experiences?

8 A. I think that I could.

9 Q. And you are currently teaching her son?

10 A. Yes.

11 Q. And I think you said that that would be a concern
12 of yours?

13 A. It is a concern of mine.

14 Q. And so this concern of returning to the classroom
15 after the trial is over and facing him, particularly if you
16 had returned a verdict that he was in disagreement with, you
17 would find that to be very difficult?

18 A. Yes. That would be.

19 Q. So that certainly would weigh on you while you were
20 trying to make a decision?

21 A. I think it probably would, yes.

22 Q. And so you know, I guess it's just not really fair.
23 It's not fair to ask someone if they think they can be fair
24 because we all want to be fair, but you are telling us that
25 this relationship in going back and facing this child in the
26 classroom would weigh on you, and it would be a problem for
27 you. And so at this phase all we are asking at this point is
28 just for people to be honest with their feelings and their
29 opinions.

Individual Voir Dire - JURY OUT

1 A. Well, I'm, I'm sure I would -- I'm sure Jeremy
2 would come to my mind. I mean that would be hard to erase
3 him from my mind. And that it would just almost be
4 impossible to do that, and hoping that I could be fair and,
5 you know, I just can't say.

6 Q. And I think you understand that--

7 A. Sure.

8 Q. -- hoping isn't enough for us right now.

9 A. I know. I understand that.

10 Q. So right now you would hope to be fair, but you
11 can't tell us that you would be?

12 A. (Long pause.)

13 Q. You are the only--

14 A. -- I just, I am just saying I would hope that I
15 would be fair, and I would hope -- I mean I would try my best
16 to be fair.

17 Q. And we appreciate that.

18 A. That's all I can say.

19 Q. Right. I'm not--

20 A. -- You know, I don't know what effect it would have
21 on me.

22 Q. And I'm not trying to criticize you, and you
23 really -- I'm not trying to, none of us want to put you in a
24 situation that wouldn't be fair to you. And so what we need
25 is, is for you to be able to tell us; if you cannot tell us
26 yes, I can be fair, just to tell us your honest feelings that
27 you don't think you can be. It's just your feelings.

28 A. Right.

29 Q. There is not a right or wrong.

Individual Voir Dire - JURY OUT

1 A. I guess I should say no, just knowing the child.

2 Q. Knowing that just that--

3 A. -- I mean that is the only--

4 Q. -- you can't be fair?

5 A. Well, I mean I would want to be fair. I would try
6 to be fair, but I don't know in my mind if it would ever go
7 away of my responsibility when I leave the court and go back
8 to the classroom.

9 Q. And I understand that, and I appreciate that.

10 BY MR. DE GRUY: And that's all I have, Your
11 Honor.

12 BY THE COURT: And I have just a follow up.

13 FURTHER INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. One thing I assume you are saying is that that
15 would influence your thinking somewhat?

16 A. It would have to, I guess.

17 Q. Okay.

18 A. I mean knowing the obligations to him.

19 Q. Thank you, Ms. Billingsley. You may step down.

20 (Juror 25, Ms. Billingsley, leaves the courtroom.)

21 BY THE COURT: I'm going to excuse her for cause.
22 Has anybody got any objection?

23 BY MR. DE GRUY: No, Your Honor.

24 BY MR. EVANS: No, sir.

25 BY THE COURT: Okay. Melvin Johnson.

26 (JUROR NO. 26, MR. MELVIN DEWAYNE JOHNSON, enters
27 the courtroom.)

28 BY THE COURT: Have a seat right here, Mr.
29 Johnson.

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY THE COURT:

1 Q. State your name, please, sir.

2 A. Melvin Dewayne Johnson.

3 Q. Mr. Johnson, have you ever heard anything about
4 this case?

5 A. No, sir. Bits and pieces, but I don't know nothing
6 about it.

7 Q. Do you remember when it happened?

8 A. No, sir. I can't recall it.

9 Q. Okay. What you hear, what you heard, did you hear
10 from street talk or gossip?

11 A. Mostly gossip.

12 Q. Okay, what -- the part that wasn't mostly gossip,
13 where did you hear that?

14 A. I read it through the paper. I glanced through it.

15 Q. Did you know any of the victims?

16 A. Not personally. I know his father through by my
17 wife--

18 Q. I'm talking about the victims. That is the folks
19 that died.

20 A. Oh. No, sir. No, sir. I'm sorry.

21 Q. Do you know Mr. Flowers? You say you don't know
22 him personally?

23 A. I know him through by my wife. I knew his father,
24 and I work with some of his relatives at KI. I believe he is
25 related to C.L. Flowers and Red Flowers. I believe they are
26 related somehow.

27 Q. Okay. Based on what you have heard and your
28 knowing some of his family, have you formed an opinion as to
29

Individual Voir Dire - JURY OUT

1 the guilt or innocence of Mr. Flowers in this matter?

2 A. Well, yes, sir.

3 Q. Would that opinion keep you from being a fair and
4 impartial juror in this case?

5 A. No, sir.

6 Q. For both sides?

7 A. No, sir.

8 Q. Okay. If you were selected as a juror, could you
9 sit in the jury box, listen to the evidence that comes in
10 from this jury box, take the instructions on the law that I
11 would give you at the end of the case, apply them to the
12 facts, then discuss that with your fellow jurors, and make a
13 decision based on those facts and that situation rather than
14 what you heard and to the exclusion of any relationship you
15 might have with his family? Could you do that?

16 A. That is something I never tried, never experienced
17 before. I think I could.

18 Q. Do you think -- do you know of any reason you
19 couldn't be a fair and impartial juror in this case?

20 A. I could be fair.

21 Q. Mr. Johnson, in response to a question I asked this
22 morning, you stated that you had a religious or philosophical
23 or personal belief against the imposition of the death
24 penalty; is that correct?

25 A. (No immediate response.)

26 Q. You weren't for it; right?

27 A. No, sir.

28 Q. Okay. If the jury found Mr. Flowers guilty beyond
29 a reasonable doubt, unanimously found that and rendered a

Individual Voir Dire - JURY OUT

1 verdict of guilty, then there would be a second phase to this
2 trial. At that phase the State would put on evidence of
3 aggravating circumstances that would tend to warrant the
4 death penalty. The Defendant would put on mitigating
5 circumstances which would be a lot of different things that
6 weren't related to the facts of the case. It could be
7 related to his life and his family and those kind of things.
8 Those things would be put on for the purpose of saying no, he
9 shouldn't get death. He ought to get life.

10 I will give an instruction on the law at the end of
11 the case that had those factors in there, and it would also
12 tell the jury how they are to consider those things in
13 reaching a verdict in this case, the procedure that they
14 would have to undergo. The jury in the long run would have
15 to make that determination, but those are the factors that
16 they would have to deal with to reach a verdict. When it got
17 to that point, there would only be two situations. It would
18 either be the death penalty, or it would be life in prison.
19 If I instruct you at the end of the trial that the law
20 authorizes the imposition of the death penalty and you find
21 from the evidence that the evidence warrants the imposition
22 of the death penalty, could you impose the death penalty?

23 A. Me?

24 Q. Yes, sir.

25 A. Impose it? Could you be more direct?

26 Q. Well, could you vote for the death penalty?

27 A. No, sir.

28 Q. Okay.

29 BY THE COURT: Mr. Evans.

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Thank you, Your Honor.

2 INDIVIDUAL VOIR DIRE BY MR. EVANS:

3 Q. How are you doing, Mr. Johnson?

4 A. Fine. How are you?

5 Q. All right. I just want to go through a few things
6 with you. First, let me start with the death penalty issue.
7 Then I want to go back through some of your relationships.
8 But as far as the death penalty, what you are telling us is
9 that you have strong beliefs against the death penalty; is
10 that right?

11 A. Yes, sir.

12 Q. Okay, and because of those strong beliefs, you
13 yourself could not vote for the death penalty regardless of
14 what the Judge told you the law was or the facts of the case;
15 is that correct?

16 A. That's correct.

17 Q. Okay. Now setting that aside, I want to go into a
18 few other things. How well do you actually know the
19 Defendant Curtis Flowers?

20 A. Not that well. I only know of him.

21 Q. About how long have you known him?

22 A. Um, I would say about two or three years, something
23 like that.

24 Q. Okay. And you know, you said you know him through
25 your wife. Is she--

26 A. --It's my wife knew his father. See, I met a lot
27 of people when I, when I was -- well, when I started working
28 down here at a factory called KI. And like I said, I was
29 working with some of his relatives, and the lady that I

Individual Voir Dire - JURY OUT

1 married, she was working there. And I met a lot of people
2 through her--

3 Q. All right.

4 A. -- that I didn't know.

5 Q. Is she related to them or just friends?

6 A. Friends.

7 Q. And you have worked with, I assume you have worked
8 with his brother there; is that right, Archie?

9 A. Yes, sir.

10 Q. And at least one of his sisters?

11 A. Sure.

12 Q. Did you get to know them pretty well?

13 A. Yes, sir.

14 Q. Now Mr. Johnson, the reason we go into that, what
15 we are attempting to do, we are attempting to get a jury that
16 can sit over here that doesn't have any friendships or
17 kinships, if possible that doesn't know anything about the
18 people involved on either side.

19 A. I understand.

20 Q. So that they can come in with an open mind and not
21 have any, I think you have said you already have an opinion;
22 not have any prior opinions of what the outcome should be in
23 the case or kinships or friendships, but base their decision
24 strictly on the evidence that comes out in court. Don't you
25 think from all of these people that you know that are related
26 to him and already have an opinion in the case, that that
27 would enter into your decision in this case?

28 A. Be more frank what you are saying.

29 Q. Well, don't you think the fact that you know him,

Individual Voir Dire - JURY OUT

1 you know his family members, if you were picked as a juror
2 and were deciding on his guilt or innocence, don't you think
3 those factors would enter into your thinking?

4 A. Well, somewhat.

5 Q. Okay. And because of that, it would make it -- now
6 on different cases different people can make good jurors.
7 Would you agree with me on that?

8 A. Sure.

9 Q. And on a case that a person doesn't have any
10 friendships or kinships, they would make a better juror than
11 somebody that may be related to either side?

12 A. Maybe.

13 Q. Would you agree with me that because of your
14 friendships with his family and with him, that it would make
15 it difficult for you to be a fair and impartial juror on this
16 particular case?

17 A. I would.

18 Q. And because of that and your beliefs on the death
19 penalty, would you feel that you could not be a fair and
20 impartial on this particular case?

21 A. If it boiled down to the death penalty, I wouldn't.
22 I couldn't be fair. I would have to vote against it.

23 Q. Okay, and that is not only because you know him and
24 his family, but that is your belief on any case; is that
25 correct?

26 A. Regardless who it is, definitely. I don't go for
27 that.

28 BY MR. EVANS: Nothing further, Your Honor.

29 BY MR. DE GRUY: I have no questions.

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** You may step down, Mr. Johnson.

2 (Juror 26, Mr. Johnson, leaves the courtroom.)

3 **BY THE COURT:** I'm going to excuse him for cause.
4 Any objection?

5 **BY MR. EVANS:** No, sir.

6 **BY MR. DE GRUY:** No, Your Honor.

7 **BY THE COURT:** Raymond Beckwith.

8 (JUROR NO. 27, MR. RAYMOND C. BECKWITH, enters the
9 courtroom.)

10 INDIVIDUAL VOIR DIRE BY THE COURT:

11 Q. State your name, please, sir.

12 A. Raymond Carroll Beckwith.

13 Q. You need to speak up where they can hear you, Mr.
14 Beckwith.

15 A. Raymond Carroll Beckwith.

16 Q. Mr. Beckwith, have you ever heard anything about
17 this case?

18 A. Yes.

19 Q. How did you hear that?

20 A. Well, I lived here when it happened.

21 Q. In Winona?

22 A. Yes, sir.

23 Q. Did you read about it in the media or hear any news
24 coverage of it?

25 A. Yeah, all.

26 Q. Have you heard street talk and gossip about it?

27 A. Yes.

28 Q. Have you ever discussed it with anybody that
29 purported to know the facts, that actually knew what

Individual Voir Dire - JURY OUT

happened?

A. Not really.

Q. Do you know any of the victims?

A. Yes.

Q. Or did you know any of them?

A. Yes.

Q. Who did you know?

A. BoBo.

Q. You knew BoBo?

A. Yes.

Q. Okay, how did you know him?

A. We lived next to them, and him and my son was friends.

Q. All right, you were next door neighbors?

A. At one time before that, a little while before that happened.

Q. Okay. Did you know any of the other victims?

A. No, not really.

Q. I assume then you know BoBo's family?

A. Yes.

Q. Have you ever, have they ever discussed this matter with you or in your presence?

A. No.

Q. Do you know Mr. Flowers?

A. No.

Q. Do you know any of his family?

A. No.

Q. Based on what you have heard and based on the relationship that you had with BoBo Stewart and his family,

Individual Voir Dire - JURY OUT

1 have you formed an opinion as to the guilt or innocence of
2 Mr. Flowers in this case?

3 A. Yes, kind of.

4 Q. Would that opinion keep you from being a fair and
5 impartial juror?

6 A. It probably would.

7 Q. Thank you, sir.

8 **BY MR. EVANS:** No questions.

9 **BY MR. DE GRUY:** No questions.

10 **BY THE COURT:** You may step down, Mr. Beckwith.

11 (Juror 27, Mr. Beckwith, leaves the courtroom.)

12 **BY THE COURT:** I'm going to excuse him for cause.

13 Any objection?

14 **BY MR. EVANS:** None.

15 **BY MR. DE GRUY:** No, Your Honor.

16 **BY THE COURT:** Number 28. I believe it's

17 Ms. Allen, Ms. Eddie Allen.

18 (JUROR NO. 28, MS. EDDIE MAE ALLEN, enters the
19 courtroom.)

20 INDIVIDUAL VOIR DIRE BY THE COURT:

21 Q. State your name, please, ma'am.

22 A. Eddie Mae Allen.

23 Q. Ms. Allen, have you ever heard anything about this
24 case?

25 A. About this case?

26 Q. Uh-huh.

27 A. No, nothing but what I read in the paper. That is
28 all.

29 Q. Okay, you have never talked to anybody about it?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. Have you ever heard any street talk or gossip about
3 it?

4 A. No.

5 Q. Did you know any of the victims?

6 A. Never did.

7 Q. Do you know Mr. Flowers?

8 A. No -- yeah, I know him, but I really know his
9 parents.

10 Q. You really know his parents?

11 A. Uh-huh.

12 Q. Okay, are you close friends with them?

13 A. Yes.

14 Q. Go to the same church?

15 A. No. No, no.

16 Q. How is it that you-- what is your friendship made
17 up off? How do you know them?

18 A. Oh, I been knowing them for years, you know.

19 Q. Just known them for years?

20 A. Yeah.

21 Q. Okay. Based on what you have heard about this
22 case -- well, let me ask you first. Have you ever discussed
23 it with them, this matter with them?

24 A. No.

25 Q. Based on what you have heard, Ms. Allen, and based
26 on your relationship with the Flowers family, have you formed
27 any opinion about this case as to the guilt or innocence of
28 Mr. Flowers?

29 A. No, really not.

Individual Voir Dire - JURY OUT

1 Q. Okay, if you were selected as a juror in this case,
2 could you sit in the jury box, listen to the evidence that
3 comes in from the witness stand, take my instructions on the
4 law, and apply them to the facts as you see them, and then
5 discuss that with your fellow jurors and reach a decision
6 based on those things rather than your relationship with the
7 Flowers or with what you might have heard?

8 A. Yes, sir.

9 Q. Ma'am?

10 A. State that again now.

11 Q. Okay. If you serve as a juror, what your duty is
12 is to decide the case from the evidence that comes from the
13 witness stand, the law that I give you at the end of the
14 case. Then you must consult with your fellow jurors and
15 reach a verdict, and you must base it on that evidence and
16 that law and those consultations rather than what you might
17 have heard outside of court or what, and not based on what
18 your relationship with some family member is. So could you
19 do that?

20 A. Uh-hum.

21 Q. Do you know of any reason that you could not be
22 fair and impartial?

23 A. No, I guess not. Not that I know of.

24 Q. I can't hear you, ma'am.

25 A. No.

26 Q. Okay. You indicated when I asked the question this
27 morning about the death penalty that you had a religious or
28 personal belief in opposition to the death penalty; is that
29 correct?

Individual Voir Dire - JURY OUT

1 A. Uh-hum.

2 Q. Okay. If in fact, you sat on this jury and the
3 jury determined at the end of the first phase of the trial
4 that Mr. Flowers was guilty, there would be a second phase of
5 the trial. And at that phase the State would put on evidence
6 of aggravating circumstances. After the State had done --
7 and those circumstances would be for the purpose of showing
8 that the death penalty was warranted. After the State did
9 that, then the Defendant would put on some factual stuff
10 about mitigating circumstances which might be his parents,
11 and it might be other people that were associated with him in
12 his life. And the purpose of that testimony would be to show
13 that he ought to get life instead of death. So do you
14 understand that that is what the proper would be?

15 A. Uh-hum.

16 Q. Okay. I would also give the jury a written
17 instruction that would contain those factors, aggravating and
18 mitigating, and it would tell the jury what the procedure was
19 for them to analyze that and reach a verdict. Do you
20 understand that?

21 A. Uh-hum.

22 Q. Okay. At that point I will instruct, will have
23 instructed the jury that the law has authorized the
24 imposition of the death penalty. If I do that, if I tell you
25 that the law authorizes the imposition of the death penalty
26 and the evidence, you find that the evidence warrants the
27 imposition of the death penalty, could you impose it? Could
28 you vote for it?

29 A. Uh-uh, because I don't believe it.

Individual Voir Dire - JURY OUT

1 Q. I can't hear you, ma'am.

2 A. No. I don't believe in it.

3 Q. Okay.

4 BY MR. EVANS: Thank you, Your Honor.

5 INDIVIDUAL VOIR DIRE BY MR. EVANS:

6 Q. How are you doing, Ms. Allen?

7 A. Fine. How are you?

8 Q. Doing fine. I just want to cover a couple of
9 things with you. To start with, you stated that you are
10 close friends with his family; is that right?

11 A. Yeah, I know them real well.

12 Q. His mother and his father?

13 A. Yes.

14 Q. Any other family members?

15 A. One of his cousins, yes.

16 Q. So several of his family members including his
17 mother and father?

18 A. Right.

19 Q. All right, Ms. Allen, part of what we are doing, as
20 the Court has told you, this could be a two phase trial. The
21 first phase deals only with guilt or innocence, so that's
22 what I want to address my questions to to start with. If you
23 were picked as a juror on this case -- well, let me tell you
24 this to start with. What we are attempting to do if possible
25 is find a jury that has no outside influences on a case. It
26 wouldn't be influenced because of friendships with family on
27 either side or kinships or things like that, but could come
28 in here, listen to the evidence, and base their decision on
29 nothing except the evidence with nothing else entering into

Individual Voir Dire - JURY OUT

1 their mind. The fact that you are such good friends with his
2 family, if you were picked on this case, don't you think that
3 that would influence you as to what decision you should
4 render?

5 A. Um, no. I don't guess it would. I just believe in
6 what is true but, you know.

7 Q. So you are telling us that you wouldn't even think
8 about the fact that you were close friends with his family
9 when you were deciding guilt or innocence?

10 A. It was innocent.

11 Q. Whether guilty or innocent?

12 A. It might would.

13 Q. It might would?

14 A. Uh-hum.

15 Q. Because of that friendship with his family, don't
16 you think on this particular case that would keep you from
17 being a fair and impartial juror then?

18 A. It might would.

19 Q. Okay. And in addition to that, your beliefs are
20 strong against the death penalty, aren't they?

21 A. Right.

22 Q. So in any case, regardless of what the Judge told
23 you the law was and what the facts were, you could never vote
24 for the death penalty in any case, could you?

25 A. It would be hard.

26 Q. Ma'am?

27 A. It would be hard. I don't believe in it.

28 Q. And I hate to pin you down, but I really need a yes
29 or no answer. If the Judge told you that the law authorized

Individual Voir Dire - JURY OUT

1 the death penalty and the facts justified it, could you
2 yourself vote for the death penalty?

3 A. Hum. No.

4 BY MR. EVANS: Thank you, ma'am.

5 BY MR. DE GRUY: I have no questions.

6 BY THE COURT: You may step down, Ms. Allen.

7 (Juror 28, Mr. Allen, leaves the courtroom.)

8 BY THE COURT: I'm going to excuse her for cause.

9 Any?

10 BY MR. EVANS: No objection.

11 BY MR. DE GRUY: No objection.

12 BY THE COURT: Okay. Tommie Lee Burt.

13 (JUROR NO. 29, MR. TOMMIE LEE BURT, enters the
14 courtroom.)

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. Mr. Burt, would you state your name, please.

17 A. Tommy Lee Burt.

18 Q. Mr. Burt, have you ever heard anything about this
19 case?

20 A. I have heard some things about it.

21 Q. Street talk and gossip?

22 A. Street talk and gossip.

23 Q. How about media coverage?

24 A. A little bit.

25 Q. Okay. Did you know the victims in this case, any
26 of them?

27 A. I don't know them personally, but I know of them by
28 just--

29 Q. Okay. You were not personal friends with any of

Individual Voir Dire - JURY OUT

1 them?

2 A. No.

3 Q. Do you know any of their family?

4 A. No, I don't know them personally, but I know the
5 boy, some of the boys. You talking about the victims?

6 Q. I'm talking about the folks that died.

7 A. Not personally, no.

8 Q. Okay. Do you know Mr. Flowers?

9 A. Yes.

10 Q. How do you know him?

11 A. Well, I seen him from around town and practically
12 kind of grew up with him and everything.

13 Q. Were y'all friends growing up?

14 A. Well, we never had no outside disturbance, so I
15 would call ourselves friends, yeah.

16 Q. Did y'all live close to each other?

17 A. No.

18 Q. Do you know the other members of his family?

19 A. Yes.

20 Q. Which ones do you know?

21 A. His daddy, mom, brothers.

22 Q. You consider them friends of yours too?

23 A. Yes.

24 Q. Mr. Burt, based on what you have heard about this
25 case and based on your relationship with the Flowers family,
26 have you formed an opinion as to the guilt or innocence of
27 Mr. Flowers?

28 A. Have I?

29 Q. Yes, sir.

Individual Voir Dire - JURY OUT

1 A. Well, yes.

2 Q. Okay. Would that opinion keep you from being a
3 fair and impartial juror in this case?

4 A. Well, no.

5 Q. All right, if you were chosen as a juror, could you
6 sit in the jury box, listen to the evidence that comes from
7 the witness stand, take my instructions on the law at the end
8 of the case, and apply them to the facts, then discuss all
9 that with your fellow jurors, and reach a decision based on
10 what those facts were and those discussions and that law to
11 the exclusion of what you might have heard outside of court
12 and to the exclusion of any relationship or friendship you
13 might have with the Flowers? Could you do that?

14 A. Yes, sir.

15 Q. Do you know of any reason that you could not be
16 fair and impartial?

17 A. None whatsoever.

18 Q. Mr. Burt, when I asked the jurors this morning if
19 they had any religious or personal belief that would be in
20 opposition to the death penalty, you said that you did. Is
21 that correct?

22 A. Religious?

23 Q. Or personal.

24 A. Well.

25 Q. Do you believe in it? That's what I'm asking.

26 A. Do I believe in it?

27 Q. Yes.

28 A. No.

29 Q. Okay. In this case if the jury finds the Defendant

Individual Voir Dire - JURY OUT

1 guilty, then there will be a second phase of the trial in
2 which the jury will make the determination as to what the
3 punishment would be. And there are two, only two choices.
4 One would be death, and one would be life in prison. At that
5 time the State would put on evidence of aggravating
6 circumstances which would tend to warrant the death penalty
7 or be in favor of the death penalty. The Defendant would put
8 on evidence called mitigating factors or things about his
9 life and his person and things like that that would be for
10 the purpose of saying no, the death penalty is not
11 appropriate. Instead a life sentence should be imposed. Do
12 you understand that that is how this would work?

13 A. (Juror nods his head.)

14 Q. All right. At that stage I would also give a
15 written instruction to the jury that had those factors in
16 there, and it would also put forth the procedure that the
17 jury would follow in order to reach a verdict in this case
18 and in considering those factors. Do you understand that?

19 A. Yes, sir.

20 Q. At that point in time if I instructed you,
21 Mr. Burt, that the law authorized the imposition of the death
22 penalty and you found that the evidence warranted the
23 imposition of the death penalty, could you impose the death
24 penalty, or could you vote for the death penalty?

25 A. I don't really know, sir.

26 Q. Well, you are the only one that does, Mr. Burt.

27 A. Yeah, but like I said, I'm against the death
28 penalty, and I don't know what the outcome would be on it.

29 Q. Okay. I understand that you are against it, but

Individual Voir Dire - JURY OUT

1 that is not the question. The question is if I told you that
2 in this case the law authorized it and you listened to all
3 the evidence and you found from the evidence that it
4 warranted it, could you impose the death penalty? Could you
5 do it?

6 A. I don't think so.

7 Q. Okay.

8 **BY THE COURT:** Mr. Evans.

9 **BY MR. EVANS:** Thank you, Your Honor.

10 INDIVIDUAL VOIR DIRE BY MR. EVANS:

11 Q. Good evening, Mr. Burt.

12 A. How are you doing?

13 Q. All right. I just want to go over a few things
14 with you. I understand you know the Defendant. You grew up
15 with him?

16 A. (Juror nods his head.)

17 Q. And basically, you might as well say you know his
18 whole family and are friends with basically his whole family;
19 is that right?

20 A. Yes.

21 Q. All right, to start with, I want you to understand
22 that nobody is trying to judge whether anybody is a fair
23 person or not when it comes to the jury selection process
24 because I think everybody is trying to be fair, trying to be
25 honest in what they are answering, so nobody is judging that.
26 What we are looking at is each individual juror, can they be
27 impartial on this particular case. Do they have any
28 friendships with either the Defendant or the victims that
29 would cause them to lean one way or the other. Or like in

Individual Voir Dire - JURY OUT

1 your case, not only friendships with the Defendant, but
2 friendships with basically his whole family. So what I'm
3 asking you at this point is on this particular case -- I'm
4 not saying could you be a fair and impartial juror, but on
5 this particular case don't you think that the fact that you
6 grew up with him, the fact that you are friends with his
7 family, would enter into your thinking when you were sitting
8 there trying to decide whether this Defendant was guilty or
9 innocent?

10 A. Well, yes.

11 Q. Okay, and on this particular case because of your
12 friendship with him, of growing up with him, your friendships
13 with his family, don't you think on this particular case that
14 would keep you from being a fair and impartial juror to both
15 sides?

16 A. Well, yes.

17 Q. And following up real briefly on the death penalty
18 issue, your opinions are pretty strong against the death
19 penalty, aren't they?

20 A. Right.

21 Q. And because of those opinions, would it be a true
22 fact to say that even if the Judge told you that the law
23 authorized the death penalty in this case and even if the
24 facts justified it, you yourself could not vote for the death
25 penalty, could you?

26 A. Right.

27 BY MR. EVANS: Nothing further, Your Honor.

28 BY MR. DE GRUY: I have no questions.

29 BY THE COURT: Mr. Burt, you may step down. Go

Individual Voir Dire - JURY OUT

1 out that side door, Mr. Burt.

2 (Juror 29, Mr. Burt, leaves the courtroom.)

3 **BY THE COURT:** I'm going to excuse him for cause.

4 Any objection?

5 **BY MR. EVANS:** No objection.

6 **BY MR. DE GRUY:** No, Your Honor.

7 **BY THE COURT:** Norma Costilow.

8 (JUROR NO. 30, MS. NORMA B. COSTILOW, enters the
9 courtroom.)

10 **BY THE COURT:** Just have a seat.

11 INDIVIDUAL VOIR DIRE BY THE COURT:

12 Q. State your name, please, ma'am.

13 A. Norma Costilow.

14 Q. Ms. Costilow, have you ever heard anything about
15 this case?

16 A. Yes, sir.

17 Q. How did you hear about it?

18 A. The newspaper and the TV, read about it.

19 Q. And I assume you probably have heard some community
20 talk and gossip and that kind of thing --

21 A. Yes, sir.

22 Q. Is that correct?

23 A. Yes, sir.

24 Q. Did you know any of the victims?

25 A. Yes, sir.

26 Q. Which ones did you know?

27 A. Bertha Tardy and Carmen Rigby.

28 Q. How well did you know them?

29 A. Bertha, very well.

Individual Voir Dire - JURY OUT

1 Q. Okay. You considered yourself a friend of hers?

2 A. Yes.

3 Q. Do you know their families?

4 A. Yes. My husband is a cousin to Mrs. Tardy.

5 Q. Okay. Have you ever had any discussions with any
6 members of her immediate family?

7 A. Yes.

8 Q. About this matter?

9 A. Yes.

10 Q. Ms. Costilow, have you formed an opinion about this
11 case--

12 A. -- Yes, I have.

13 Q. --as to the guilt or innocence of Mr. Flowers?

14 A. Yes, I have.

15 Q. Would that keep you from being a fair and impartial
16 juror?

17 A. Yes, it would.

18 BY MR. EVANS: No questions.

19 BY MR. DE GRUY: No questions, Your Honor.

20 BY THE COURT: Thank you, Ms. Costilow.

21 (Juror 30, Ms. Costilow, leaves the courtroom.)

22 BY THE COURT: Lashanda McChristion. Oh, I'm
23 going to excuse her for cause. I don't know whether I
24 said that or not. No objection; right?

25 BY MR. EVANS: No objection.

26 BY MR. DE GRUY: No.

27 (JUROR NO. 31, MS. LASHANDA L. McCHRISTION, enters
28 the courtroom.)

29 INDIVIDUAL VOIR DIRE BY THE COURT:

Individual Voir Dire - JURY OUT

1 Q. State your name, please.

2 A. Lashanda McChristion.

3 Q. Ms. McChristion, do you know anything about this
4 case?

5 A. I knew it was going to get tried.

6 Q. Okay, did you know about it when it happened?

7 A. No.

8 Q. Okay, did you live here then?

9 A. No.

10 Q. Where did you live?

11 A. Carthage, Mississippi.

12 Q. How long have you lived here?

13 A. October '99.

14 Q. October '99?

15 A. Right.

16 Q. Have you heard any talk about this case in the
17 community since you have lived here?

18 A. No. Not until this week when I--

19 Q. When you got your summons?

20 A. Yes.

21 Q. Oh, okay. Have you ever seen any newspaper or
22 television or radio coverage of it?

23 A. No.

24 Q. Did you know any of the victims?

25 A. Not that I know of.

26 Q. Are you originally from here or--

27 A. No.

28 Q. -- Leake County?

29 A. I'm from Leake County.

Individual Voir Dire - JURY OUT

1 Q. So do you know any of the victims' family?

2 A. If I do, I don't know anything about it.

3 Q. Okay. Do you know Mr. Flowers?

4 A. No.

5 Q. Do you know any of his family?

6 A. I know, I know who his father is.

7 Q. And he is the one that works at Wal-Mart; is that
8 right?

9 A. Yes, uh-hum.

10 Q. Is that how you know him?

11 A. Yes.

12 Q. Ms. McChristion, based on what little you know,
13 have you formed an opinion based on what you have heard as to
14 the guilt or innocence of Mr. Flowers in this case?

15 A. No.

16 Q. If you were seated as a juror, could you listen to
17 the evidence that comes from the witness stand and then take
18 my instructions on the law at the end of the case and apply
19 them to the facts as you see them, then consult with your
20 fellow jurors, and reach a verdict based on that?

21 A. Yes.

22 Q. Do you know of any reason that you could not be
23 fair and impartial in this case?

24 A. No.

25 Q. Okay. Ms. McChristion, when I asked this morning,
26 I asked the jurors if they had any religious or personal
27 belief against, I mean in opposition to the death penalty.
28 Do you remember me asking that question?

29 A. Yes.

Individual Voir Dire - JURY OUT

1 Q. And you didn't say anything, so do you have any
2 objection to the death penalty?

3 A. No.

4 Q. Okay. In this case if the jury at the first stage
5 of the trial finds beyond a reasonable doubt that the
6 Defendant is guilty, then we would go to a second stage.

7 A. Uh-hum.

8 Q. At that second stage it would be additional proof
9 in relation to what the penalty should be, and there are only
10 two penalties - the death penalty or life in prison.

11 A. Okay.

12 Q. At that stage the State is going to put on evidence
13 about aggravating circumstances which would be facts that
14 would tend to warrant the death penalty. The Defendant is
15 going to put on some mitigating facts or mitigating
16 circumstances which may be things about his life and how he
17 grew up and who his family is and what kind of person he was
18 and all like that, and there may be other things. I don't
19 know; they are not limited very much as to what they can put
20 on there. Those things though would be for the purpose of
21 swaying the jury toward the life option rather than the death
22 option. Do you understand that is how the procedure would
23 work?

24 A. Uh-hum.

25 Q. I would also give the jury at that time a written
26 instruction that would contain those factors, and it would
27 also contain the procedure of how to evaluate that and how
28 the jury should go, what the procedure the jury should go
29 through in reaching a verdict. The jury would have to

Individual Voir Dire - JURY OUT

1 determine what verdict to render after hearing all those
2 factors, but I would give, the procedure would be set out in
3 a written instruction. Do you understand that?

4 A. Yes, sir.

5 Q. Okay. If I instructed the jury that the law
6 authorized the imposition of the death penalty and you found
7 from the evidence that the evidence warranted it, could you
8 impose the death penalty?

9 A. Yes.

10 Q. Let me take it one step further, Ms. McChristion.
11 At that stage after you had heard all that and had my
12 instructions on the law, would you consider both options and
13 consider all, the aggravating circumstances and the
14 mitigating circumstances, and then consider both options, or
15 would you automatically just impose the death penalty?

16 A. I would consider both.

17 **BY THE COURT:** You would consider both, okay.

18 Thank you.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. Ms. McChristion, how are you doing?

21 A. Fine, and you?

22 Q. All right. Now when did you first move here?

23 A. October '99.

24 Q. Okay. So you weren't -- before that you were
25 living in Carthage; is that right?

26 A. Yes.

27 Q. And now you are not working here now, are you? You
28 are at--

29 A. I work at Mississippi Valley State in Itta Bena.

Individual Voir Dire - JURY OUT

1 Q. Okay. So you still aren't here a lot; is that
2 right?

3 A. I drive back and forth every day.

4 Q. Okay. So that may be one reason that you haven't
5 heard a whole lot about the case because you are not here a
6 lot?

7 A. I guess.

8 Q. Now the Judge has gone through some relationships.
9 You say you do not know the Defendant?

10 A. No.

11 Q. You do know his father?

12 A. Uh-hum.

13 Q. How do you know his father? Do you talk to him at
14 Wal-Mart? Do you just know who--

15 A. -- just speak to him when he check me out.

16 Q. Okay. Now is there anything about the fact that
17 you know him that would make it difficult for you to sit on
18 this particular case knowing that his son is the person that
19 you would be trying?

20 A. No.

21 Q. So you could disregard that and not let it enter
22 into your opinion at all; is that right?

23 A. Yes.

24 Q. Is there anything that you know that would keep you
25 from being a fair and impartial juror to both sides in this
26 case?

27 A. No.

28 Q. And you have told the Judge that you have no
29 problems with the death penalty if the case justifies it?

Individual Voir Dire - JURY OUT

1 A. Yes.

2 Q. I'm a little confused. Let me ask you this. On
3 your questionnaire, you have served on a jury before; is that
4 correct?

5 A. In Leake County, yes.

6 Q. What type of case was it?

7 A. Aggravated assault.

8 Q. Okay, so it was a criminal case?

9 A. I guess, uh-hum.

10 Q. And the jury did reach a verdict in that case?

11 A. Yes, sir.

12 Q. Okay. And according to this, you have appeared in
13 justice court, but it was when you were representing the
14 company that you were working for?

15 A. Right.

16 Q. On civil matters?

17 A. Um, non-payment of rent.

18 Q. Okay.

19 BY MR. EVANS: Nothing further, Your Honor.

20 BY MR. DE GRUY: Nothing, Your Honor.

21 BY THE COURT: Thank you, ma'am. You may step
22 down.

23 (Juror 31, Ms. McChristion, leaves the courtroom.)

24 BY THE COURT: No objection?

25 BY MR. EVANS: No, sir.

26 BY MR. DE GRUY: No, sir.

27 BY THE COURT: All right, Margaret Moore.

28 (JUROR NO. 32, MS. MARGARET MOORE, enters the
29 courtroom.)

Individual Voir Dire - JURY OUT

INDIVIDUAL VOIR DIRE BY THE COURT:

1 Q. State your name, please, ma'am.

2 A. Margaret Moore.

3 Q. Ms. Moore, have you ever heard anything about this
4 case?

5 A. Yes, I have.

6 Q. How did you hear that, or how did you get that
7 information?

8 A. From the beginning.

9 Q. From the beginning? Well, yeah.

10 A. Well, when I first heard about it, we were on the
11 coast, and then when we came back, of course, I read and
12 watched the -- and then I knew Bertha.

13 Q. How well did you know her?

14 A. We were in the same Sunday school class.

15 Q. So you were friends; is that correct?

16 A. I guess you would say that, yes.

17 Q. All right. How else did you hear about it?

18 A. I have read paper, you know, articles in the paper,
19 and then I have seen articles on the television, channel 9.

20 Q. Okay. Do you know her family?

21 A. Who, Bertha's?

22 Q. Uh-huh.

23 A. I know Roxanne and Frank.

24 Q. Have you ever had an opportunity to discuss this
25 with them or in their presence?

26 A. Yes, they are in my Sunday school class.

27 Q. Okay, so it has been discussed there; is that
28 correct?
29

Individual Voir Dire - JURY OUT

1 A. Yes.

2 Q. How about the other people that died at that place?
3 Do you know them?

4 A. I know of them. I know BoBo was in my daughter's
5 class.

6 Q. Do you know Mr. Flowers?

7 A. No.

8 Q. Do you know any of his family?

9 A. Not that I know of.

10 Q. Based on what you have heard from all of these
11 different media sources and the conversations in the
12 community and especially your conversations with Ms. Ballard,
13 have you formed an opinion as to the guilt or innocence of
14 Mr. Flowers?

15 A. I'm afraid I have.

16 Q. Would that opinion keep you from being a fair and
17 impartial juror in this case?

18 A. It probably would, yes.

19 **BY THE COURT:** Thank you, ma'am.

20 **BY MR. EVANS:** No questions.

21 **BY MR. DE GRUY:** No questions.

22 **BY THE COURT:** Thank you, Ms. Moore.

23 (Juror 32, Ms. Moore, leaves the courtroom.)

24 **BY THE COURT:** Okay, I am excusing her for cause.
25 Any objection?

26 **BY MR. EVANS:** None.

27 **BY MR. DE GRUY:** No objection.

28 **BY THE COURT:** Bobby Youngblood.

29 (JUROR NO. 33, MR. BOBBY YOUNGBLOOD, enters the

Individual Voir Dire - JURY OUT

courtroom.

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. Just have a seat right there, sir. State your name, please, sir.

A. Bobby Youngblood.

Q. Mr. Youngblood, have you ever heard anything about this case?

A. Yes, sir.

Q. How did you hear that?

A. Through the newspaper and when it happened back, and on the TV.

Q. Did you hear any community talk or gossip, street talk or anything like that about it?

A. Well, yes, sir.

Q. Did you know any of the victims?

A. Not personally, but after so much media and all, well, I could recognize them.

Q. Okay, you didn't know them personally?

A. No, sir.

Q. Do you know any of their families?

A. No, sir.

Q. Okay. Do you know Mr. Flowers?

A. I do. I recognized him this morning from the TV and newspaper reports.

Q. Okay. Did you know him personally?

A. No, sir.

Q. Do you know his family?

A. No, sir.

Q. Okay. Based on what you have seen through the

Individual Voir Dire - JURY OUT

media and what you may have heard within the community, have you formed an opinion as to Mr. Flowers' guilt or innocence in this case?

A. Yes, sir.

Q. Would that opinion keep you from being a fair and impartial juror in this matter?

A. Yes, sir.

Q. Thank you, sir.

BY THE COURT: Mr. Evans?

BY MR. EVANS: No questions.

BY THE COURT: Mr. de Gruy?

BY MR. DE GRUY: No questions, Your Honor.

BY THE COURT: You may step down, Mr. Youngblood.
(Juror 33, Mr. Youngblood, leaves the courtroom.)

BY THE COURT: I'm going to excuse him for cause.
Any objection?

BY MR. EVANS: None.

BY MR. DE GRUY: No, sir.

BY THE COURT: Joyce Butts.

(JUROR NO. 34, MS. JOYCE RATLIFF BUTTS, enters the courtroom.)

BY THE COURT: Have a seat right, please.

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. Would you state your name, please, ma'am.

A. Joyce Butts.

Q. Ms. Butts, have you ever heard anything about this case?

A. Heard about it, yes.

Q. How did you get that information?

Individual Voir Dire - JURY OUT

1 A. Family, friends, the media.

2 Q. Okay, when you say family, you are talking about
3 your family?

4 A. Yes.

5 Q. Did you know the victims in this case?

6 A. Yes, by association.

7 Q. All right, who was that that you knew?

8 A. Ms. Tardy.

9 Q. And that was through a business association, you
10 say?

11 A. Yes.

12 Q. Did you know any of the others?

13 A. No.

14 Q. Do you know, do you know Ms. Tardy's family?

15 A. No.

16 Q. Do you know any of the other's family?

17 A. Only through association and the media.

18 Q. Association?

19 A. What has been heard, what has been heard through
20 the media and family talk; that's all.

21 Q. Okay. And there again, you said that family talk
22 was your family talk?

23 A. Right.

24 Q. Is that correct? Do you know Mr. Flowers?

25 A. Yes, by you know, what has been said.

26 Q. I mean do you know him personally?

27 A. No.

28 Q. Do you know his family?

29 A. Only by association.

Individual Voir Dire - JURY OUT

1 Q. And there again, that means you do not know them
2 personally; is that right?

3 A. No.

4 Q. Based on what you have heard about this matter,
5 Ms. Butts, and your business relationship with Ms. Tardy,
6 have you formed an opinion as to the guilt or innocence of
7 Mr. Flowers in this matter?

8 A. Yes.

9 Q. Would that opinion keep you from being a fair and
10 impartial juror in this case?

11 A. No.

12 Q. Okay. If you were chosen as a juror and seated in
13 the jury box, could you listen to the evidence that comes
14 from the witness stand, take my instructions on the law at
15 the end of the case, and apply them to the facts as you see
16 them, and then discuss all that with your fellow jurors and
17 reach a decision based on what the evidence and the law was
18 that you heard here in this courtroom to the exclusion of
19 what you may have heard outside of the courtroom and to the
20 exclusion of any relationships that you might have?

21 A. Yes.

22 Q. Okay. Do you know of any reason that you could not
23 be a fair and impartial juror in this case?

24 A. No, sir.

25 Q. Okay. I asked the jurors this morning, Ms. Butts,
26 if any of them had any religious or personal opinion about
27 the death penalty that would prohibit them from imposing the
28 death penalty if they should be put in that situation. You
29 didn't, you had no response. Does that mean that you do not

Individual Voir Dire - JURY OUT

1 have a belief against the death penalty?

2 A. I am -- I do not believe in the death penalty.

3 Q. You do not believe in it?

4 A. Right.

5 Q. If, in fact, this case could be -- well, let me go
6 back. This case could have two phases. The first phase
7 would be a phase that would determine the guilt of Mr.
8 Flowers as to whether or not he committed these things, and
9 the jury would have to unanimously find that he did do that
10 before they could return a verdict of guilty. You understand
11 that?

12 A. Yes, sir.

13 Q. The second phase would be only for the penalty
14 phase. The only two penalties at that time would be death
15 and life in the penitentiary. At that time the State would
16 put on evidence of aggravating circumstances which would be
17 facts that would tend to weigh toward the imposition of the
18 death penalty. The Defendant would put on mitigating facts
19 which would be facts that would tend toward the life sentence
20 as opposed to the death penalty. Do you understand that that
21 is the way the process would work?

22 A. Yes.

23 Q. I would also give a written instruction to the jury
24 that would contain those factors, and it would also designate
25 the procedure that the jury was to follow in reaching a
26 verdict after considering those factors. Do you understand
27 that?

28 A. Yes, sir.

29 Q. At that time I would instruct the jury that-- if I

Individual Voir Dire - JURY OUT

1 instruct the jury that the law has authorized the imposition
2 of the death penalty in this case and you find from the
3 facts, from the evidence that the evidence warrants the
4 imposition of the death penalty, could you impose the death
5 penalty?

6 A. No, sir.

7 Q. Okay.

8 **BY THE COURT:** Mr. Evans.

9 **BY MR. EVANS:** Thank you, Your Honor.

10 INDIVIDUAL VOIR DIRE BY MR. EVANS:

11 Q. Good evening, Ms. Butts. A couple of things I want
12 to cover with you. I'm not sure that I understand. You said
13 you knew the Defendant's family by association. What type of
14 association was that?

15 A. Church. And, you know, just being in the
16 community.

17 Q. So you go to church with them?

18 A. No, not directly, no. My husband is a minister,
19 and we interact with each other's churches.

20 Q. Okay, so you see them at church from time to time
21 at different churches?

22 A. Right.

23 Q. Now one thing that we are attempting to do, as the
24 Judge told you, a capital case is a two phase trial. The
25 first phase deals strictly with guilt or innocence, and for
26 that part, what we are attempting to do is discuss things
27 with possible jurors and see if any jurors have any
28 friendships with family or other reasons that they may tend
29 to lean in one direction or the other. You understand what

Individual Voir Dire - JURY OUT

1 I'm saying?

2 A. Yes, sir.

3 Q. For an example, if someone was a close family
4 member of one of the victims, they might not particularly be
5 a good juror on this particular case even though they might
6 be a good juror on another case. Would you agree with that?

7 A. Yes, sir.

8 Q. So that is kind of what we are looking at. And
9 from this standpoint, through the church and through your
10 husband's ministry, you do know his family?

11 A. Yes, sir.

12 Q. Do you think that that might tend to weigh on your
13 mind if you were picked as a juror in this case? If you were
14 sitting up here and trying to decide if this Defendant was
15 guilty of capital murder, do you think the fact that you know
16 them from church in that way that you do, that that might
17 tend to influence your decision?

18 A. No, sir.

19 Q. It wouldn't affect it?

20 A. No, sir.

21 Q. And you can tell us that that wouldn't even be
22 something that you would think about?

23 A. No, sir.

24 Q. Okay. So as far as that phase, you are telling us
25 that you could disregard anything that you heard; is that
26 right?

27 A. Yes, sir.

28 Q. Now you also told the Judge that you already had an
29 opinion on this case. What is that opinion based on?

Individual Voir Dire - JURY OUT

1 A. Just knowing his family and their upbringing, their
2 church and their religious beliefs.

3 Q. All right, and that is kind of what I was going to
4 while ago. Doesn't that mean that you are already leaning in
5 one direction?

6 A. No, sir.

7 Q. Even though you already have an opinion?

8 A. No, sir -- only yes, sir; I am leaning in one
9 direction. Right.

10 Q. Okay, that's what I am asking.

11 A. Yes, sir.

12 Q. And if you were picked as a juror and were sitting
13 up here, wouldn't you still be thinking about that when you
14 were trying to decide whether he was guilty or not?

15 A. Yes, sir.

16 Q. Okay, and that is what I'm trying to get to.

17 A. Okay.

18 Q. And because -- and I assume from what you are
19 telling me that you think a lot of his parents?

20 A. Yes, sir.

21 Q. The way he was brought up and things like that.
22 Because of that and because you would be thinking of those
23 things when you were trying to reach a decision of guilt or
24 innocence, that to a certain extent would have to influence
25 your decision, wouldn't it?

26 A. Yes, sir.

27 Q. And because of that in this particular case, it
28 would keep you from being a fair and impartial juror on this
29 particular case, wouldn't it?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Okay. And in addition to that, if we to go the
3 second phase, I assume that your beliefs against the death
4 penalty are pretty strong?

5 A. Yes, sir.

6 Q. And from what you have told me, I would just assume
7 that it's because of your religious beliefs; is that correct?

8 A. Yes, sir.

9 Q. And those beliefs being that strong, even if the
10 Judge told you that the death penalty was authorized in the
11 case and even if the facts justified it, you yourself could
12 never vote for the death penalty, could you?

13 A. That's right.

14 BY MR. EVANS: Nothing further, Your Honor.

15 BY MR. DE GRUY: Just a few questions, Your
16 Honor.

17 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

18 Q. Ms. Butts, do you recall filling out the question,
19 the five page questionnaire?

20 A. Yes, sir.

21 Q. The last question on the questionnaire was do you
22 have personal or religious beliefs that would prevent you
23 from voting to impose the death penalty if the facts
24 justified it? Do you recall what you put on--

25 A. (Juror shakes her head.)

26 Q. Okay. The answer was No.

27 A. Okay.

28 Q. But you seem to be telling us now that not only do
29 you have, and we understand that you are opposed to the death

Individual Voir Dire - JURY OUT

1 penalty, and nobody is trying to change your opinion. We
2 respect your opinion, but initially when you filled out the
3 questionnaire, you said that those beliefs, basically you
4 could set those beliefs aside. And that is what we are
5 trying to find out whether -- we understand that you have
6 these strong beliefs, but we need to know whether you would
7 be able to set those beliefs aside and listen to the
8 evidence. And to tell you a little bit more about the
9 procedure, you don't even get to a sentencing phase unless a
10 jury of twelve people have agreed that a person is guilty of
11 killing during the commission of a robbery. Okay?

12 A. (Juror nods her head.)

13 Q. So you would have already found that fact before
14 you even got to consider, before the Judge would even allow
15 you to consider the death penalty. And then the State would
16 have to prove at least one or more what are called
17 aggravating factors before the Judge would allow -- the Judge
18 would tell you you would have to find that beyond a
19 reasonable doubt before you could consider the death penalty.

20 A. Okay.

21 Q. And as the Judge has told you, you would then be
22 able to consider other factors.

23 A. Uh-hum.

24 Q. Anything, maybe anything about a person's life
25 before you make that decision. And so our question is could
26 you, if you made those factual findings that a person was
27 guilty of capital murder and then in the second phase that
28 there were aggravating circumstances, could you consider the
29 death penalty?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Okay, thank you.

3 BY MR. DE GRUY: That's all I have, Your Honor.

4 BY THE COURT: Thank you, Ms. Butts. You may
5 step down.

6 (Juror 34, Ms. Butts, leaves the courtroom.)

7 BY MR. EVANS: Move for cause, Your Honor.

8 BY THE COURT: Any objection?

9 BY MR. DE GRUY: No objection, Your Honor.

10 BY THE COURT: Sustained. Donna Neal.

11 (JUROR NO. 35, MS. DONNA R. NEAL, enters the
12 courtroom.)

13 INDIVIDUAL VOIR DIRE BY THE COURT:

14 Q. State your name, please, ma'am.

15 A. Donna Neal.

16 Q. Ms. Neal, have you ever heard anything about this
17 case?

18 A. Yes, sir.

19 Q. How did you get that information?

20 A. Newspapers, television.

21 Q. How about street talk, gossip, and that kind of
22 stuff?

23 A. When it first happened, yes.

24 Q. You heard it discussed in the community?

25 A. Yes.

26 Q. Okay. Did you know any of the victims?

27 A. Yes, sir.

28 Q. Who did you know?

29 A. Bertha.

Individual Voir Dire - JURY OUT

1 Q. How well did you know her?

2 A. Fairly well. I bought furniture from her.

3 Q. You bought furniture from her? Would you consider
4 her a social friend or just a business acquaintance?

5 A. Business acquaintance.

6 Q. Okay. Did you know any of the other victims?

7 A. I knew Ms. Rigby some.

8 Q. You knew who she was?

9 A. I knew who she was.

10 Q. Okay. Do you know any of the families of the
11 victims?

12 A. Yes.

13 Q. Who?

14 A. I know Roxanne, and I know Benny Rigby and the
15 sons.

16 Q. You know Benny and his sons?

17 A. Uh-hum.

18 Q. Okay. Are you friends with them?

19 A. Not social friends. Church friends and business
20 friends with Roxanne.

21 Q. You go to the same church?

22 A. The Rigby boy.

23 Q. Okay. Have you ever discussed this matter with
24 them or had them discuss it in your presence? And I'm
25 talking about any of these people?

26 A. No, sir.

27 Q. Do you know Mr. Flowers?

28 A. No, sir.

29 Q. Do you know any of his family?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Based on what you have heard either in street talk
3 or from the media or from your relationships with Ms. Tardy
4 or any member of her family or the Rigby family, have any of
5 those things caused you to have an opinion in this case as to
6 the guilt or innocence of Mr. Flowers?

7 A. Yes, sir.

8 Q. Would that opinion keep you from being a fair and
9 impartial juror?

10 A. Yes, sir.

11 Q. Okay. Thank you, ma'am.

12 **BY THE COURT:** Mr. Evans?

13 **BY MR. EVANS:** No questions.

14 **BY MR. DE GRUY:** No questions, Your Honor.

15 **BY THE COURT:** All right, you may step down.

16 (Juror 35, Ms. Neal, leaves the courtroom.)

17 **BY THE COURT:** I'm excusing her for cause. Any
18 objection?

19 **BY MR. EVANS:** No, sir.

20 **BY MR. DE GRUY:** No objection.

21 **BY THE COURT:** Carolyn McCoy.

22 (JUROR NO. 37, MS. CAROLYN S. McCOY, enters the
23 courtroom.)

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. Hi. State your name, please.

26 A. Carolyn McCoy.

27 Q. Ms. McCoy, have you ever heard anything about this
28 case?

29 A. Yes, sir.

Individual Voir Dire - JURY OUT

1 Q. How did you get that information?

2 A. Just from, like everybody else did. News.

3 Q. Okay. How about street talk and gossip, anything
4 like that?

5 A. Yes, sir.

6 Q. Did you know any of the victims?

7 A. Oh, yes.

8 Q. Who did you know?

9 A. I went to school with Carmen Rigby.

10 Q. Okay. Y'all were friends in high school?

11 A. Yes, sir.

12 Q. After high school, were you friends?

13 A. Just, no, just when I saw her, we always talked.

14 Q. Okay. How about Ms. Tardy or any of the other
15 victims?

16 A. No, sir.

17 Q. Do you know any of the family of any of the
18 victims?

19 A. Yes, I knew Carmen's mother and daddy.

20 Q. And have you ever had any discussions with them or
21 any of the family about this matter?

22 A. No, sir.

23 Q. Do you know Mr. Flowers?

24 A. No, sir.

25 Q. Do you know any of his family?

26 A. No, sir.

27 Q. Based on what you have heard either through the
28 media or street talk or gossip and based on the fact that you
29 went to school with Ms. Rigby, and you know some of her

Individual Voir Dire - JURY OUT

1 family, have you formed an opinion as to the guilt or
2 innocence of Mr. Flowers in this case?

3 A. No, sir, not really.

4 Q. Okay. If you were seated as a juror in this case,
5 could you listen to the evidence that comes from the witness
6 stand, take my instructions on the law at the end of the case
7 and apply them to the facts as you see them, and then discuss
8 those matters with your fellow jurors and make a decision
9 based on those things rather than any relationships you might
10 have had or anything you might have heard outside this
11 courtroom?

12 A. Yes, sir.

13 Q. Do you know of any reason that you could not be
14 fair and impartial in this case?

15 A. No, sir.

16 Q. All right. Ms. McCoy, if you will recall this
17 morning, I asked the jurors if they had any religious or
18 personal beliefs in opposition to the death penalty. You did
19 not make any -- you did not say that you did. Then am I
20 assuming correctly that you have no opposition?

21 A. I do not.

22 Q. You do not have any opposition?

23 A. No, sir.

24 Q. Okay. At this trial it could be two phases. The
25 first phase is to determine whether or not Mr. Flowers
26 committed these acts. The jury must find at that stage
27 beyond a reasonable doubt, and they must unanimously find
28 that he was guilty of those things before they can return a
29 verdict of guilty. If they do that, then we go to the second

Individual Voir Dire - JURY OUT

phase.

A. Yes, sir.

Q. Which is the sentencing phase. There will be additional evidence at the sentencing phase. The State will put on facts in aggravation or aggravating facts which are facts which would tend to weigh toward the imposition of the death penalty. The Defendant would put on mitigating factors, and they are fairly unlimited. They can be about his childhood, his family life. His parents might testify and things like that. I don't know what all that would be, but it would be some of that. And the purpose of that would be for the purpose of mitigation. In other words, they would weigh toward the imposition of life in prison rather than the death penalty. Do you understand that is how that system, that phase would work?

A. Yes, sir.

Q. Okay. After that, I would give the jury a written instruction that would include all those factors, and it would also have instructions on the procedure that the jury should go through in evaluating those factors in reaching its verdict. Do you understand that?

A. Yes, sir.

Q. If at that phase I instructed the jury that the law authorized the imposition of the death penalty and you found from the facts that the evidence warranted that imposition of the death penalty, could you impose the death penalty?

A. Yes, sir.

Q. Okay. After evaluating all of those things and listening to all that evidence and my instructions on the

Individual Voir Dire - JURY OUT

1 law, could you consider both options, life and death, or
2 would you automatically just vote for the death penalty?

3 A. I really don't know.

4 Q. Okay, Ms. McCoy, you are the only one that does,
5 and I have got to know from you as to whether or not you
6 would consider the options. There will be evidence now on
7 both ways, and there will be instructions from the Court, and
8 I need to know whether you will consider both options?

9 A. Yes, sir. I would consider both.

10 Q. Okay. And by, and in considering them then, if you
11 found that the life should be imposed, could you vote that
12 way?

13 A. Yes, sir.

14 Q. Okay.

15 **BY THE COURT:** Mr. Evans?

16 **BY MR. EVANS:** Thank you, Your Honor.

17 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

18 Q. How are you doing, Ms. McCoy?

19 A. Fine.

20 Q. There are a few things I want to go through with
21 you. You understand from what the Judge is saying that this
22 can be a two phase trial?

23 A. Yes, sir.

24 Q. The first phase deals with nothing except guilt or
25 innocence. The second phase deals with the penalty. In the
26 first phase what we are attempting to do by going through
27 questions with the jury is try to arrive at a jury that can
28 disregard any outside influences, can disregard anything they
29 have heard, any friendships, things like that, come into this

Individual Voir Dire - JURY OUT

1 courtroom, sit in the jury with a clean slate and say,
2 nothing is going to enter into my decision except what I hear
3 in the courtroom and what the Judge tells me I must do. And
4 we expect what would happen is that we would go through
5 testimony. Once both sides have rested, the Judge will
6 instruct the jury on the law. One of the things that the
7 Judge will instruct the jury is that the Defendant is
8 presumed innocent until the State has put on proof. So at
9 this point he is presumed by law to be innocent because we
10 have put on no proof.

11 A. That's right.

12 Q. Do you have any problem with that theory of the
13 law?

14 A. No, sir.

15 Q. And that is the way it should be in any case
16 because until we have met our burden of proof, there has been
17 no evidence. Can you tell us that you would come into the
18 courtroom; you could, you would completely disregard anything
19 that you may have heard or anybody that you know; listen to
20 the evidence that comes forth into the courtroom, the
21 instructions that the Judge gives; and base your decision of
22 guilt only on what comes out in the courtroom?

23 A. Yes, sir.

24 Q. Going on into the second phase, if the jury
25 convicts in the first phase, that phase deals with penalty.
26 And just as I have gone over with you on the first phase,
27 what we want to do is get a jury that on that phase can also
28 come in with a clean slate. They can set aside everything up
29 to that point and say okay, I'm going to consider what comes

Individual Voir Dire - JURY OUT

1 out in court before I decide what the penalty should be. And
2 in that phase, as the Judge told you, both sides will put on
3 different things. The State will put on some things; the
4 Defense will put on some things. Of course, we will be
5 arguing for one penalty; they will be arguing for another.
6 And the Court will tell you step by step how you are to look
7 at those things. But what the Court would expect the jury to
8 do at that point is to listen to both sides, and then after
9 listening to both sides, make a decision based upon what they
10 feel the penalty should be at that point, whether it be life
11 or death. Could you do that?

12 A. Yes, sir.

13 Q. And at that point what we are looking for is a jury
14 that wouldn't be leaning toward a life sentence or leaning
15 toward the death penalty but would come in with a complete
16 open mind and say okay, I don't have any opinion of what the
17 penalty should be. Tell me what your sides are; tell me what
18 the law is; and then I will make a decision. Could you do
19 that?

20 A. Yes, sir.

21 BY MR. EVANS: Nothing further, Your Honor.

22 BY MR. DE GRUY: Thank you, Your Honor.

23 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

24 Q. Ms. McCoy, did you attend Ms. Rigby's funeral?

25 A. No, sir. I didn't.

26 Q. You did not. How often would you see her? You
27 said since -- you were friends in high school?

28 A. Uh-hum.

29 Q. And since high school, you would see her around

Individual Voir Dire - JURY OUT

1 town?

2 A. Just at where she worked in the store.

3 Q. Do you recall how often?

4 A. Not very often.

5 Q. Once a month?

6 A. No, sir.

7 Q. Less than that?

8 A. Yes.

9 Q. To the Judge's initial question about considering
10 punishment, your answer, I believe, was you don't know if you
11 could consider a life sentence?

12 A. Yes, sir.

13 Q. So you have an opinion as to what the appropriate
14 punishment is right now?

15 A. Yes, sir.

16 **BY THE COURT:** I didn't hear you--

17 A. -- Not until after I heard both sides.

18 Q. I understand you are saying you wouldn't make a
19 decision until you had heard both sides, but as you sit here
20 right now, you have an opinion?

21 A. No, sir.

22 Q. Well, could you explain what you meant by you don't
23 know if you could consider life?

24 A. Well, I think I changed it after that.

25 Q. And so my question is did you change your opinion?

26 A. No, sir.

27 Q. You didn't have an opinion--

28 **BY MR. EVANS:** -- Your Honor, she has answered
29 that.

Individual Voir Dire - JURY OUT

1 BY MR. DE GRUY:

2 Q. --when you first came in?

3 A. I think I have already answered that.

4 **BY THE COURT:** I believe she has.

5 BY MR. DE GRUY:

6 Q. And you said you had heard discussions and
7 participated in discussions about--

8 A. I haven't participated in discussions. I have just
9 heard people talk like everybody else has.

10 Q. Okay. You yourself have never expressed an
11 opinion?

12 A. No, sir.

13 Q. Now your opinions on the death penalty in general
14 are pretty strong. Is that correct?

15 A. Well, I haven't, I didn't say that.

16 Q. Okay. Could you tell me how you feel about the
17 death penalty?

18 A. I really don't know.

19 Q. You don't know. Have you ever given it thought
20 before?

21 A. No, I have never had to.

22 **BY MR. DE GRUY:** Just -- I have nothing further.

23 **BY MR. CARTER:** One moment, Your Honor.

24 (Defense Counsel confer.)

25 BY MR. DE GRUY:

26 Q. Now this friendship you had with Carmen, do you
27 believe that when you are determining, when you are listening
28 to the evidence of whether or not Mr. Flowers is guilty at
29 the first phase of the trial and then you have to go back

Individual Voir Dire - JURY OUT

1 into the jury room with the law given to you by the Judge and
2 the evidence that you have heard in court; would your
3 personal friendship with Carmen be weighing on you? Would it
4 be a factor, do you think, in your deliberations process?

5 A. I would consider all sides.

6 Q. And my question is would the fact that you are
7 friends with Ms. Rigby, were friends with Ms. Rigby, would
8 that be also something you would be considering?

9 A. Yes, sir.

10 Q. And so you know, nobody here is trying to say that
11 you aren't a fair person, but I think you understand what we
12 are doing, why everyone is asking questions is we are trying
13 to find out whether you might be fair in this particular
14 case. And that's why we are questioning everybody. We are
15 not singling you out, you know. But based on this friendship
16 and the fact that that would be one of the things you would
17 be considering, not just the evidence in the courtroom, do
18 you think -- and this isn't, it's not a judgment thing. It's
19 just in this particular case do you think that you could
20 really be fair?

21 A. Yes, sir.

22 Q. But it is something you would be considering along
23 with the evidence you heard in the courtroom?

24 A. Yes, sir.

25 Q. Thank you.

26 BY MR. DE GRUY: I have no more questions.

27 BY THE COURT: You may step down.

28 (Juror 37, Ms. McCoy, leaves the courtroom.)

29 BY THE COURT: Any objection to her?

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** No, sir.

2 **BY MR. DE GRUY:** We would move for cause. Ms.
3 McCoy clearly stated that she would be considering
4 personal relationships in the deliberation process,
5 not just the evidence presented in court.

6 **BY THE COURT:** She stated that she would listen
7 to the evidence in this case and make her decision
8 based on the evidence from the witness stand, and she
9 did that pretty clearly over and over again, and I
10 will not excuse her for cause. Darrell O'Bryan.

11 (JUROR NO. 38, MR. DARRELL W. O'BRYAN, enters the
12 courtroom.)

13 **BY THE COURT:** Right up here, Mr. O'Bryan.

14 INDIVIDUAL VOIR DIRE BY THE COURT:

15 Q. Would you state your name.

16 A. Darrell Wayne O'Bryan.

17 Q. Mr. O'Bryan, have you ever heard anything about
18 this case?

19 A. Yes, sir. I have.

20 Q. How did you get that information?

21 A. From the very beginning through the newspapers and
22 the TV reports. I was living in Winona at the time.

23 Q. Okay. Did you know any of the victims?

24 A. Yes, I did.

25 Q. Who did you know?

26 A. I knew all the Tardys, but it wasn't a close
27 knowledge of them. It was just, you know, how are you doing,
28 kind of thing.

29 Q. Did you know any of the others?

Individual Voir Dire - JURY OUT

1 A. No.

2 Q. Okay, did you ever have any discussions after this
3 occurred with any of the Tardy family?

4 A. No, sir.

5 Q. Okay. Do you know Mr. Flowers?

6 A. No, sir, not that I know of unless he had some
7 dealings with my dad years ago. I wouldn't know him.

8 Q. Okay. How about his family?

9 A. No, sir.

10 Q. Mr. O'Bryan, based on what you have heard, have you
11 formed an opinion as to the guilt or innocence of Mr.
12 Flowers?

13 A. Well, I would have to say I have, sir.

14 Q. Would that opinion keep you from being a fair and
15 impartial juror in this case?

16 A. Yes, sir. It would.

17 Q. Okay.

18 BY THE COURT: Mr. Evans.

19 BY MR. EVANS: No questions.

20 BY THE COURT: Mr. de Gruy?

21 BY MR. DE GRUY: No, sir.

22 BY THE COURT: You may step down, Mr. O'Bryan.

23 (Juror 38, Mr. O'Bryan, leaves the courtroom.)

24 BY THE COURT: I'm going to excuse him for cause.

25 Any objection?

26 BY MR. EVANS: No objection.

27 BY MR. DE GRUY: No objection.

28 BY THE COURT: Wilma Kemp.

29 (JUROR NO. 39, MS. WILMA LOYCE KEMP, enters the

Individual Voir Dire - JURY OUT
courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please.

A. Wilma Kemp.

Q. Ms. Kemp, do you know anything about this case?

A. Just what I have seen and heard in the papers.

Q. Have you heard any street talk, gossip or anything like that about it? And general community discussion?

A. Yeah, I mean it's hard not to.

Q. Okay. You were aware when it happened and -- is that right, or did you live here then?

A. I lived here, but I wasn't much in the community, so I really didn't -- I mean I heard it, but I didn't know anything about it.

Q. Did you know any of the victims?

A. No.

Q. Do you know any of their families?

A. Well, my job at the bank now, I have learned Mr. Frank Ballard and Ms. Roxanne Ballard.

Q. You know them through your working at the bank?

A. Through work, right.

Q. What is your position at the bank?

A. Administrative assistant to the president.

Q. Okay. So you have, is it just a business relationship with the Ballards?

A. Uh-hum. I don't know them personally; no, sir.

Q. Have you ever had any discussions with them about this matter?

A. (Juror shakes her head.)

Individual Voir Dire - JURY OUT

1 Q. Have they ever discussed it in your presence?

2 A. (Juror shakes her head.)

3 Q. You need to talk out.

4 A. Oh. No. I'm sorry.

5 Q. It's all right. Do you know Mr. Flowers?

6 A. No, sir.

7 Q. Do you know any of his family?

8 A. I don't think so.

9 Q. Based on what you have heard in the media and what
10 you have heard around the community, Ms. Kemp, have you
11 formed an opinion as to the guilt or innocence of Mr.
12 Flowers?

13 A. I don't think I have -- no.

14 Q. If you were selected as a juror in this case, could
15 you sit in the jury box and listen to the evidence and at the
16 conclusion of the trial, take that evidence and take my
17 instructions on the law, apply my instructions on the law to
18 that evidence and then discuss that with your fellow jurors
19 and reach a verdict based on the things that happened in this
20 courtroom to the exclusion of what you may have heard in the
21 past?

22 A. Yes, sir.

23 Q. Do you know of any reason that you could not be
24 fair and impartial in this case in this matter?

25 A. No, sir.

26 Q. Okay. I asked the whole jury panel this morning if
27 they had any religious or personal beliefs in opposition to
28 the death penalty. You did not say that you did. I just
29 want to confirm; is that the case?

Individual Voir Dire - JURY OUT

1 A. Right.

2 Q. This case could be two phases. It could first be a
3 phase to determine whether or not Mr. Flowers did these
4 things, and if the jury unanimously finds beyond a reasonable
5 doubt that he did and returns a verdict of guilty, then we
6 will go to the second phase of the trial, which would be to
7 determine the penalty. And the jury gets to determine the
8 penalty, and there are only two. There is the death penalty,
9 and there is life in the penitentiary. At that stage there
10 will be additional proof. The State will put on proof of
11 aggravating circumstances. No certain-- that proof will be
12 for the purpose of weighing on the side of the death penalty.
13 The Defendant will put on mitigating facts. That may include
14 a lot of things. Some examples may be his family may
15 testify. They may testify about how he grew up and what
16 kind of person he is and those things. Those things, of
17 course, would be to weigh in favor of life versus the death
18 penalty.

19 I will give the jury a written instruction that
20 includes those factors. It also will include directions or
21 the procedure of how the jury will examine those in reaching
22 a verdict. Ultimately, the jury will make up its own mind as
23 to what that verdict would be as to the penalty. Do you
24 understand all that?

25 A. Yes, sir.

26 Q. Okay. If we get down to that, then if I instruct
27 the jury that the law authorizes the imposition of the death
28 penalty and you find from the facts that the facts warrant
29 the imposition of the death penalty, could you then impose

Individual Voir Dire - JURY OUT

it?

A. Yes, sir.

Q. Okay. If we get to that point and you have, you have heard those facts and you have gotten my instruction on the law, could you consider both options, life and death, or would you automatically impose the death penalty?

A. I would probably have to consider both.

Q. Okay.

BY THE COURT: Mr. Evans.

BY MR. EVANS: Thank you, Your Honor.

INDIVIDUAL VOIR DIRE BY MR. EVANS:

Q. Good evening, Ms. Kemp. I just want to go over a few things with you. As the Judge has gone over with you, this is a capital case which can be in two different parts. The first part deals with strictly guilt or innocence. And what we are attempting to do, we are attempting to get a jury that has no outside influences, no kinships or friendships with either side that would affect them that can come in here, listen to the evidence, and base their decision of whether the Defendant was guilty or not on just the evidence that comes out in the courtroom and the law that the Judge gives. Can you tell us that if you were picked as juror, you would come in; you could disregard anything you may have heard; listen to the evidence; listen to the Court's instructions; and base your decision of guilt or innocence on just the evidence in the courtroom?

A. Yes, sir.

Q. All right, and as the Judge told you, once that phase is over, if the jury convicts, then we go into the

Individual Voir Dire - JURY OUT

1 second phase. In that phase also, we want to have a jury
2 that is fair and impartial to both sides, a jury that is not
3 leaning toward the death penalty or leaning toward a life
4 sentence, but will listen to both sides. And as the Judge
5 told you, we will be putting on factors called aggravating
6 factors. They are for the purpose of trying to sway the jury
7 that the death penalty is the proper penalty. The Defense,
8 when we get through with that, will be putting on the
9 mitigating factors, and as the Judge told you, we can't tell
10 you now what they are because they are kind of unlimited in
11 what they can go into. They may bring up things about his
12 childhood. Anything -- and most of what you will hear or all
13 of what you will hear on the mitigating factors have nothing
14 to do with the case. They are about him. They are about
15 reasons for the jury to consider so that they can attempt to
16 get the jury to vote for a life sentence. You understand
17 that?

18 A. Yes, sir.

19 Q. And we expect what the Judge to tell you, and he
20 basically already has, is that you are supposed to consider
21 both of those. You are supposed to consider what we put on;
22 consider what they put on; and only after you have considered
23 those and listened to the Judge's instructions are you to
24 even consider what penalty is appropriate. Can you do that?

25 A. Yes, sir.

26 Q. And in other words, you wouldn't go in leaning
27 toward a life sentence or leaning toward the death penalty.
28 You would go in with an open mind, listen to both sides and
29 base your decision on that; is that correct?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 **BY MR. EVANS:** Nothing further, Your Honor.

3 **BY MR. DE GRUY:** Thank you, Your Honor.

4 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

5 Q. Ms. Kemp, I believe you told us earlier that your
6 sister had been an armed robbery victim?

7 A. Yes, sir.

8 Q. Are you and your sister close?

9 A. Yes, sir.

10 Q. Very close?

11 A. (Juror nods her head.)

12 Q. I assume then y'all have discussed her experience?

13 A. Well, we never sat down and talked about it, no. I
14 mean it was something that happened, and we got through it.

15 Q. And you understand that the allegation in this
16 case, what the State is alleging is that these killings
17 occurred during a robbery?

18 A. Okay.

19 Q. Now as Mr. Evans told you, we are trying to find
20 people to serve on the jury who can be fair and impartial in
21 this case, and so we are asking what are probably none of our
22 business questions. But because of what we are trying to do,
23 we need to ask you about some personal life experiences. And
24 so knowing now that the allegation that the State is
25 bringing forward is that this case involves a robbery and
26 based on your life experience with your sister, having been a
27 victim of an armed robbery, my question is hearing evidence
28 about whether or not a robbery occurred and particularly a
29 killing occurring during that robbery, would your life

Individual Voir Dire - JURY OUT

1 experience influence you or be an influence on you listening
2 to the evidence and then ultimately deliberating on the
3 evidence?

4 A. Do you mean in swaying my decision about it or?

5 Q. Would it be something that you think, and I know
6 this is kind of putting you on the spot here. It's not a
7 situation you have been in before to think about this, but
8 you know what it was like for your sister and you as a family
9 member of hers. Do you think that this is the kind of case -
10 and it doesn't mean that you wouldn't be a good juror on a
11 lot of other kinds of cases - but do you think this is the
12 kind of case that you could serve as a juror on?

13 A. Yeah. I would not have a problem with that issue.
14 I mean I don't see that it would affect me one way or the
15 other.

16 Q. Okay. Your experience wouldn't weigh on you in the
17 deliberation process trying to decide the question in this
18 case?

19 A. Right.

20 BY MR. DE GRUY: That's all I have, Your Honor.

21 BY THE COURT: You may step down, Ms. Kemp.

22 (Juror 39, Ms. Kemp, leaves the courtroom.)

23 BY THE COURT: Any objection to her?

24 BY MR. EVANS: No, sir.

25 BY MR. DE GRUY: No, Your Honor.

26 BY MR. EVANS: If I count right, that is 36.

27 BY THE COURT: Yeah, let me talk to y'all up here
28 just a second.

29 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE

Bench Conference

AUDIENCE AS FOLLOWS:)

1
2 **BY THE COURT:** We have enough, of course, to pick
3 a jury. Y'all agree with that?

4 **BY MR. EVANS:** Yes, sir.

5 **BY MR. DE GRUY:** Yes, sir.

6 **BY THE COURT:** Okay. We don't have enough for
7 the alternates, but it's 5:30. What do y'all think
8 about picking the jury and maybe doing the alternates
9 first thing in the morning?

10 **BY MR. EVANS:** It would probably be the safest
11 thing, and I think both sides are going to need just a
12 little bit of time to go over them.

13 **BY THE COURT:** Oh, yeah.

14 **BY MR. EVANS:** But I think it would probably be
15 the safest thing to do. That way we could go ahead
16 and sequester the jury.

17 **BY THE COURT:** Well, I believe what we have got
18 to have is I have to have six more to qualify in order
19 to get -- well, I may not need that many, but to be
20 safe, I would have to have six more. And that is
21 going to take us 30 or 45 minutes, if we are lucky.

22 **BY MR. EVANS:** This group is going to give us the
23 jury at least.

24 **BY THE COURT:** Yeah, and at least we will have a
25 jury, and then we can -- and obviously, you know, I
26 have got more jurors coming in. We can get
27 alternates; it won't be a problem. What do y'all
28 think?

29 **BY MR. DE GRUY:** I don't have a problem.

Bench Conference

1 **BY THE COURT:** Okay. Then why don't we take a
2 break and y'all can be talking. I'm going to get you
3 a new list.

4 **BY MR. DE GRUY:** Good.

5 **BY THE COURT:** I knew everybody would appreciate
6 that.

7 **BY MR. EVANS:** With new numbers, I would say.

8 **BY THE COURT:** With new numbers. The numbers
9 will be 1 through 36, and as I told you, the second
10 ones will start with 26, and we will go through there.
11 And let's do that. I have got them all in a room. We
12 will pick them, we will pick that jury, and we will
13 sequester it tonight. I will bring these others in
14 and let them go home and tell them they can be back in
15 the morning say 9:00?

16 **BY MR. EVANS:** Fine.

17 **BY MR. DE GRUY:** Yes.

18 **BY THE COURT:** Okay. Okay, y'all do that, and I
19 will tend to the rest of them.

20 **BY MR. EVANS:** Are we free to go ahead and go
21 while you do that?

22 **BY THE COURT:** Yeah, yeah, unless y'all want to
23 be in here while I am doing this. I will leave that
24 up to y'all.

25 END BENCH CONFERENCE

26 (The Court confers with the Bailiff off the
27 record.)

28 REST OF JURY PANEL ENTERS THE COURTROOM.

29 **BY THE COURT:** Ladies and gentlemen, we have come

Rest of jury panel released for the night

1 to a point to where we have to stop at this particular
2 point in time, and we have not talked to all of you.
3 We are not going to be able to finish the jury
4 selection tonight. We are going to be able to do
5 something toward it, but we won't be able to finish it
6 until in the morning. And, of course, we have to talk
7 to y'all individually before we can do that just like
8 we have been doing all afternoon. But while we are
9 doing these other things, there is not going to be any
10 point in you staying and waiting around on that.

11 So I'm going to let you go and ask you to be back
12 in court tomorrow morning at 9 o'clock. I do not
13 think you will be here all day at all tomorrow. I
14 think at the most half a day, or at least those of you
15 who don't get selected on the jury. So I'm going to
16 let you go. Now you must not talk about this matter
17 with anybody or allow anybody to talk about it in your
18 presence or with you. And you should not, you should
19 avoid any media coverage that you might see, newspaper
20 or television or radio, until we can get through with
21 this process. Okay, I will see y'all in the morning
22 at 9 o'clock.

23 REST OF JURY PANEL RELEASED FOR THE DAY.

24 (DURING THE RECESS THAT FOLLOWED, THE COURT
25 REPORTER DELIVERED A NEW JURY LIST TO ALL COUNSEL. FOLLOWING
26 A RECESS OF APPROXIMATELY AN HOUR AND FIFTEEN MINUTES FOR
27 COUNSEL TO CONFER, ALL COUNSEL AND THE DEFENDANT APPEARED IN
28 OPEN COURT FOR THE SELECTION OF THE JURY AS FOLLOWS:)

29 **BY THE COURT:** Have y'all all gotten the new

Selection of the jury - JURY OUT

1 list?

2 BY MR. EVANS: Yes, sir.

3 BY MR. DE GRUY: Yes, Your Honor.

4 BY THE COURT: Okay. All right, Mr. Evans.

5 Tender me twelve.

6 BY MR. EVANS: The State will tender juror number
7 1; tender juror number 2; tender juror number 3.
8 Juror number 4 will be S-1. Juror number 5 will be
9 S-2. Tender number 6; tender number 7. Number 8 will
10 be S-3. Tender number 9; tender number 10; tender
11 number 11. Number 12 will be S-4. Number 13 will be
12 S-15. Number 14 will be S-6. Tender number 15;
13 tender number 16. 17 will be S-7. Tender number 18;
14 tender number 19.

15 BY THE COURT: Okay.

16 BY MR. DE GRUY: Your Honor, the State has now
17 exercised seven peremptory challenges. They have had
18 for their consideration seven African-American jurors,
19 and they have exercised their strikes on every one.
20 And we under Batson versus Kentucky would make an
21 objection and allege a prima facie case has been
22 demonstrated of race determination in jury selection.

23 BY THE COURT: All right, pursuant to Batson,
24 that does make a prima facie case. Mr. Evans, give me
25 your reasons for number 4.

26 BY MR. EVANS: Juror number 4, which is S-1,
27 there are several reasons, but the most prominent
28 reasons for our strike is that he is against the death
29 penalty, and he knows the Defendant and his family.

Selection of the jury - JURY OUT

1 **BY THE COURT:** What did he say in relation to the
2 death penalty?

3 **BY MR. EVANS:** To start with, he already had
4 formed an opinion on this particular case. He is
5 friends with the sister of the Defendant, Priscilla.
6 He knows the Defendant. He knows his whole family,
7 and he said he was against the death penalty. He
8 ended up being rehabilitated and saying he could
9 consider it, but he said he did not believe in the
10 death penalty and to start with, said that he couldn't
11 give it under any circumstance.

12 **BY THE COURT:** Okay, on my notes I show that
13 after the initial inquiry, he did indicate some
14 reservations about the death penalty. So I find that
15 that, for peremptory challenges purposes, that is a
16 race neutral reason. All right.

17 **BY MR. EVANS:** S--

18 **BY THE COURT:** -- Wait a minute, wait a minute.
19 I'm sorry. I got ahead of myself. Is there any
20 rebuttal to that, Mr. de Gruy?

21 **BY MR. DE GRUY:** No, Your Honor.

22 **BY THE COURT:** Okay. Then I find that that is a
23 race neutral reason.

24 **BY MR. EVANS:** S-2, which is juror number 5,
25 Lester Sawyer; I think the Court could even take
26 judicial notice that he has mental problems. And I
27 have talked to numerous law enforcement officers in
28 the community. He constantly calls in bomb threats.
29 He claimed different animals and things have been shot

Selection of the jury - JURY OUT

1 around the house. They get there and find out it's
2 nothing there. He has mental problems, and that is
3 the main reason we do not want him on there is his
4 mental condition.

5 **BY THE COURT:** Do you have any rebuttal to that?

6 **BY MR. DE GRUY:** No, Your Honor. We don't have
7 rebuttal to that. If I could back up just a moment.
8 The excuse on the first juror was that his opposition
9 to the death penalty. Both Elsie Holifield and Debbie
10 Collins, who are white females, jurors number 15 and
11 16, expressed even stronger reservations about the
12 death penalty and were both rehabilitated, and the
13 State accepted them. I think the fact that they are
14 accepting those two white ladies and striking
15 Mr. Hamer for allegedly the same reason indicates that
16 that is not a real reason, and therefore Mr. Hamer
17 should be placed on the jury.

18 **BY MR. HILL:** Your Honor, if I could add one
19 thing in rebuttal. I believe he said, he indicated
20 also on the witness stand that he had two domestic
21 violence convictions. So that is another
22 consideration that I believe that would be--

23 **BY MR. EVANS:** Also, the two that he is talking
24 about were pretty adamant on the stand that they do
25 not have that problem. He said he did have a problem.
26 At one point he even said he could not under any
27 circumstance vote for the death penalty.

28 **BY THE COURT:** I think the totality of the
29 circumstances make the strike race neutral. How about

Selection of the jury - JURY OUT

rebuttal to Mr. Sawyer?

BY MR. DE GRUY: No rebuttal.

BY THE COURT: Okay. Then I find that the reasons given by the District Attorney are race neutral as it pertains to Mr. Sawyer. Ms. Golden, number 8?

BY MR. EVANS: Ms. Golden was one of the ones that said at one point under no circumstance could she consider the death penalty, that it was against her religion. And she was barely in my opinion rehabilitated but enough to where she said that she could consider it.

BY THE COURT: Rebuttal to that, Mr. de Gruy?

BY MR. DE GRUY: It is the same as Holifield and Collins. In fact, Ms. Collins said she would never vote for the death penalty. I don't believe that that is the real reason.

BY THE COURT: Okay. I find that that is a race neutral reason, and it satisfies Batson.

BY MR. EVANS: Number 12 is the next one, Your Honor, which is S-4. To start with, he has problems with law enforcement officers. I have talked to numerous officers that they have had pretty verbal run-ins with about his resentment with the law. He has an outstanding warrant right now for contempt of court in Grenada which shows his disregard for the system in totality. He knows the Defendant. He knows the Defendant's mother. He knows the Defendant's sister. He knows the Defendant's brother. He knows

Selection of the jury - JURY OUT

1 the Defendant's uncle, and anybody that has that many
2 connections with the Defendant and his family, we do
3 not want on the jury.

4 **BY MR. DE GRUY:** Your Honor, as far as the, what
5 law enforcement officers told him or this outstanding
6 warrant, there is no evidence of that in the record.
7 And we believe that there must be, for the Court to
8 make a factual determination of that, the prosecution
9 must actually produce evidence in court.

10 **BY THE COURT:** Well, he stated that it was.
11 Mr. Kendle testified that that was out there, and he
12 owed a fine and that he just hadn't paid the fine, and
13 that's why that warrant was outstanding, and when he
14 paid the fine, that would be it. He had an
15 explanation for it, but the warrant is, in fact there
16 and through his own mouth. And he did know these
17 other people in the family, so I find that is a race
18 neutral reason.

19 **BY MR. DE GRUY:** Just for the record, Your Honor,
20 I don't recall him testifying that he knew there was a
21 warrant, that he knew about why, that he did have a
22 domestic violence charge but--

23 **BY THE COURT:** --No, no, no. Well, I don't know
24 that it was domestic violence.

25 **BY MR. EVANS:** We have got a copy of it if the
26 Court would like for us to put it in the record.

27 **BY THE COURT:** Well, it would help the record
28 probably if you did. He testified though that -- it's
29 not a domestic violence charge. It's a contempt of

Selection of the jury - JURY OUT

1 court charge for failing to pay a fine for whatever
2 that is. I don't recall what the initial charge was.
3 What is out there now is for failing to obey the order
4 of the Court. He acknowledged that he had not paid
5 that fine, but I think to clear up the record, Mr.
6 Evans, let me see what you have got. Show it to
7 Mr. de Gruy.

8 **BY MR. EVANS:** The main reasons on him is all of
9 his connections with the Defendant's family.

10 **BY THE COURT:** Well, I know, but you have listed
11 this, so let's make the record complete.

12 **BY MR. EVANS:** Yes, sir. (To Mr. Hill) Is that
13 it? Go ahead and show it to Andre and then give it to
14 the Judge.

15 (Document shown to Mr. de Gruy.)

16 **BY MR. HILL:** Do you want it marked?

17 **BY THE COURT:** I'm going to admit that for the
18 purposes of this hearing. Any objection to that?

19 **BY MR. DE GRUY:** No, Your Honor.

20 **BY THE COURT:** Give it to the court reporter.
21 This is-- mark it as a State's exhibit to the Batson
22 challenge to Mr. Kendle. You can abbreviate that as
23 far as the sticker goes, but let the record reflect
24 that it is an exhibit in support of the race neutral
25 reasons Mr. Evans has provided on Mr. Kendle.

26 (BENCH WARRANT ON MARQUIS KENDLE WAS MARKED AND
27 RECEIVED IN EVIDENCE AS EXHIBIT "A" FROM THE STATE IN SUPPORT
28 OF THE RACE NEUTRAL REASON TO THE BATSON CHALLENGE ON JUROR
29 NUMBER 12, MARQUIS TORRELL KENDLE.)

Selection of the jury - JURY OUT

1 **BY THE COURT:** All right, Ms. Curry.

2 **BY MR. EVANS:** Hold on; let me find her on here.

3 Ms. Curry works with the Defendant's sister, Alicia,
4 and she has problems with the death penalty also.

5 Other reasons: One of my investigators, John Johnson,
6 personally had run-ins with her husband and convicted
7 him of burglary of a nursing home when he was with the
8 police department and sent him to the penitentiary.
9 But the main reason is going to be connections with
10 the Defendant's family.

11 **BY THE COURT:** Refresh my memory about those.

12 **BY MR. HILL:** And she had problems with the death
13 penalty.

14 **BY MR. EVANS:** Yeah, and she had-- I said that.
15 She said she couldn't vote for the death penalty, and
16 she works with the Defendant's sister Alicia.

17 **BY THE COURT:** Okay. Rebuttal?

18 **BY MR. DE GRUY:** I believe the record would
19 reflect that she worked with Felicia ten years ago.
20 And again, her position on the death penalty was not
21 as strong in opposition as Ms. Holifield and Ms.
22 Collins.

23 **BY THE COURT:** What does the record reflect as to
24 when she worked with her? Do you recall?

25 **BY MR. EVANS:** No, sir. I don't. I just put
26 down that she worked with her, and I don't want to
27 leave anybody on that has ever worked with any of the
28 family if I can keep from it because everybody that
29 has answered has been influenced by this family one

Selection of the jury - JURY OUT

1 way or the other. And most of them have opinions that
2 know the family. For that reason, I don't want to
3 leave anybody on that has working relationships or
4 friendships with the family. But she also, besides
5 that, the death penalty question. The death penalty
6 on her, she was one of the ones that did not even
7 respond to the Court's questioning, but when she got
8 on the stand, she said she could not vote for the
9 death penalty, and then she was rehabilitated.

10 **BY THE COURT:** The Court does recall that during
11 all of this voir dire there have been many people who
12 have had contact with the Defendant's family and many
13 of them who have worked with them. Almost all of
14 those have had some opinion based on that
15 relationship. Some of them haven't, but some of them
16 have. And the State has a right to exercise a
17 challenge based on some of the answers from the other
18 jurors as far as their peremptory challenge goes. And
19 therefore, I find that that is a race neutral reason.

20 **BY MR. DE GRUY:** Your Honor, one more on as to
21 the run-ins with the law and her husband's
22 prosecution. Juror number 9, Ms. Bane, a white
23 female, said her brother was charged with some
24 offense. At least her brother is what she answered
25 out, and I think there is an answer on her
26 questionnaire. Yet the State accepted her.

27 **BY THE COURT:** Okay, but I find it race neutral
28 on the basis that she had worked with the other family
29 member. Latoya Carodine.

Selection of the jury - JURY OUT

1 **BY MR. EVANS:** Your Honor, Ms. Carodine, we have
2 got several reasons. One is her belief against the
3 death penalty. Another reason in there is that she
4 worked at Multicraft, and several of the Defendant's
5 family members from the record worked at Multicraft.
6 So again, I don't want to leave anybody on there that
7 has connections with the family, that has worked with
8 the family, and had run-ins with the family.

9 **BY THE COURT:** Rebuttal?

10 **BY MR. DE GRUY:** Other than on the death penalty
11 question, the same point that he has accepted two
12 white jurors with similar views.

13 **BY THE COURT:** Okay. But I find that it's a
14 question, the issue about whether they have all worked
15 together to be my same ruling as it was on the
16 previous juror, and I find that to be a race neutral
17 reason for the exercise of a peremptory challenge.
18 And therefore it meets Batson. I find it is race
19 neutral. Connie Pittman.

20 **BY MR. CARTER:** Your Honor, one moment. With
21 respect to Ms. Carodine, my record reflects that she
22 said she didn't know Curtis, the victim, or the
23 family. As I understand it, she said she didn't work
24 with any of the Flowers as far as she knew.

25 **BY MR. EVANS:** According to her questionnaire,
26 she worked at Multicraft, and that's where they work,
27 which is another reason, she did not tell the truth--

28 **BY THE COURT:** --Well, I mean does that place --
29 how long was that place in existence?

Selection of the jury - JURY OUT

1 **BY MR. EVANS:** There were several of them working
2 there during the time that she was there.

3 **BY THE COURT:** Is that in the record?

4 **BY MR. EVANS:** Yes, sir. It has been put in the
5 record when they worked there.

6 **BY THE COURT:** Okay, I'm going to hold it is race
7 neutral. Connie Pittman.

8 **BY MR. EVANS:** Connie Pittman. We have, the main
9 reason on her -- we have got several reasons, and I'm
10 not even listing all the reasons on any of them. I am
11 just putting the most, what I think are the most
12 significant reasons.

13 **BY THE COURT:** Well, you probably ought to list
14 all of them.

15 **BY MR. EVANS:** On Connie Pittman, the main reason
16 is that she said on the stand she didn't believe he
17 did it. And anybody that has an opinion at this point
18 that they would say something like that, they cannot
19 be fair and impartial, and I just don't want them on
20 there.

21 **BY THE COURT:** Rebuttal to that?

22 **BY MR. DE GRUY:** We don't have any, Your Honor.

23 **BY THE COURT:** Okay. That statement in and of
24 itself would be sufficient to strike her as a
25 peremptory. Okay. I have got another finding to
26 make, but I'm going to make that finding at the end as
27 to pretext. Okay.

28 **BY MR. EVANS:** Juror number 21 is strike S-8,
29 Your Honor.

Selection of the jury - JURY OUT

1 **BY THE COURT:** Well, you haven't even given me
2 that one.

3 **BY MR. EVANS:** Oh. I am giving you one before I
4 even get to them.

5 **BY THE COURT:** Yeah, the fact is, you skipped
6 one. Let's go back. Let's make sure I have got
7 twelve. (Court recounts.) Okay. What do you say to
8 number 1?

9 **BY MR. DE GRUY:** That would be D-1.

10 **BY THE COURT:** Okay. What do you say to number
11 2?

12 **BY MR. DE GRUY:** That will be D-2.

13 **BY THE COURT:** And number 3?

14 **BY MR. DE GRUY:** We accept juror number 3.

15 **BY THE COURT:** 6?

16 **BY MR. DE GRUY:** We accept juror number 6.

17 **BY THE COURT:** 7?

18 **BY MR. DE GRUY:** That will be D-3.

19 **BY THE COURT:** Hold on just a minute. I messed
20 up. Okay. That takes us down to 9.

21 **BY MR. DE GRUY:** We will accept number 9.

22 **BY THE COURT:** And 10?

23 **BY MR. DE GRUY:** That will be D-4.

24 **BY THE COURT:** 11?

25 **BY MR. DE GRUY:** D-5.

26 **BY THE COURT:** 15?

27 **BY MR. DE GRUY:** We will accept juror 15.

28 **BY THE COURT:** 16?

29 **BY MR. DE GRUY:** Accept juror 16.

Selection of the jury - JURY OUT

1 **BY THE COURT:** 18?

2 **BY MR. DE GRUY:** Accept juror 18.

3 **BY THE COURT:** And 19?

4 **BY MR. DE GRUY:** That will be D-6.

5 **BY THE COURT:** I am sure the Collins will
6 appreciate that so they don't have to both serve.
7 Okay, I need six more, Mr. Evans.

8 **BY MR. EVANS:** Tender juror number 20. Juror
9 number 21 will be S-8, and would the Court like for me
10 as I am going through, to go ahead and give the
11 reasons?

12 **BY THE COURT:** I think he had has raised it. You
13 might as well.

14 **BY MR. EVANS:** On juror number 21, he is not in
15 favor of the death penalty, and on his questionnaire
16 he has voted not guilty on a case in the past. And
17 that is the two main reasons on him.

18 **BY THE COURT:** Okay, rebuttal?

19 **BY MR. DE GRUY:** On the issue of the death
20 penalty, the fact that he has accepted white jurors
21 with similar views.

22 **BY THE COURT:** Okay, I note your objection. On
23 the issue of him voting not guilty, that would be a
24 sufficient non-- race neutral reason to strike him.
25 Okay. 22?

26 **BY MR. EVANS:** Twenty-two will be S-9. I think
27 this Court is aware that I had to prosecute his father
28 in a pretty heated manslaughter trial here in this
29 county. The fact that I had to do that, I don't feel

Selection of the jury - JURY OUT

1 comfortable leaving him or any member of his family on
2 as a juror in a case because it was a very heated
3 trial.

4 **BY THE COURT:** Rebuttal?

5 **BY MR. DE GRUY:** Again, he has accepted Juror
6 Bane, who had a family member charged with a crime.

7 **BY MR. EVANS:** Your Honor, Bane was not in this
8 area.

9 **BY THE COURT:** In this particular case, as I
10 recall, I think this took place right before I took
11 the bench. I didn't try the case. Judge Loper tried
12 the case. This involved a killing that took place at
13 the jail, and I believe it was a deputy killed? Am I
14 not--

15 **BY MR. EVANS:** No, sir. It was a deputy that we
16 were trying.

17 **BY THE COURT:** It was the deputy, okay.

18 **BY MR. EVANS:** Jailer.

19 **BY THE COURT:** Mr. Minnieweather was the jailer,
20 that's right.

21 **BY MR. EVANS:** Yes, sir.

22 **BY THE COURT:** Okay, and they tried that. It
23 was, I know from my personal experience that it was a
24 heated incident that there was a lot of interest in
25 this community, and because of that, that certainly is
26 a race neutral reason for striking juror number 22.
27 Twenty-three?

28 **BY MR. EVANS:** Tender 23. Tender 24. Your
29 Honor, 25 is S-10. The two reasons that I have got

Selection of the jury - JURY OUT

1 down on him is one, he did not answer the death
2 penalty question on his questionnaire. Two, I
3 specifically asked him if his son was Trae when he
4 said he had had no family members arrested or in
5 trouble. And his son has been in trouble with drugs.
6 As a matter of fact, the house has even been raided in
7 Duck Hill by the drug folks before. I find it hard to
8 believe that he wasn't aware. I might could believe
9 that he wasn't aware that his son wasn't selling, but
10 the fact that he didn't even know anything about them
11 being after his son for drugs, I have some problem
12 believing since the house was searched.

13 **BY THE COURT:** Are you sure these are the same
14 people?

15 **BY MR. EVANS:** Yes, sir. This is, Chief Hargrove
16 is one. I'm not sure if the Sheriff was one of the
17 ones that had this information. I know Chief Hargrove
18 was one of them.

19 **BY MR. DE GRUY:** Our position is that evidence
20 has to be presented in court for the Court to make a
21 factual determination.

22 **BY THE COURT:** Well, he asked him specifically
23 about his son, and he said that his son was not, had
24 not been in trouble with the law. I think they can
25 then make that determination from inquiry with the
26 officers as to whether or not that is true to give
27 them a basis for striking him on a peremptory
28 challenge, and I find that that is race neutral.
29 Okay. 26.

Selection of the jury - JURY OUT

1 **BY MR. EVANS:** Tender 26. Tender 27. Is that
2 five?

3 **BY THE COURT:** Let me go back. What did you do
4 with 21? That is struck, wasn't it?

5 **BY MR. EVANS:** 21, struck; yes, sir. I think I
6 have got to give you one more.

7 **BY THE COURT:** I have got ten. Maybe I am wrong.
8 Let's go back a second. I have got on the jury 3, 6,
9 9, 15, 16 and 18; right?

10 **BY MR. EVANS:** I'm sorry. 3, 6, 9, 15, 16, and
11 18?

12 **BY THE COURT:** Right.

13 **BY MR. EVANS:** Yes, sir.

14 **BY THE COURT:** That is six, okay. The next one
15 that was tendered would be Barbour. That was seven.
16 The next one tendered would be 23, Eskridge. That
17 would be eight. Ms. Cottingham would be nine. Ms.
18 Rogers would be ten. So you have tendered--

19 **BY MR. EVANS:** -- I need one more.

20 **BY THE COURT:** Well, two to get to twelve. That
21 is six, seven, eight, nine, ten.

22 **BY MR. EVANS:** Okay, I tendered 20. I tendered
23 23. I tendered 24. I tendered 26, and I tendered 27.

24 **BY THE COURT:** Okay, well, you haven't tendered
25 27. Thank you.

26 **BY MR. EVANS:** Okay, I do tender 27. That is
27 where the problem is coming in.

28 **BY THE COURT:** All right, and that does give it.
29 Is that twelve?

Selection of the jury - JURY OUT

1 **BY MR. EVANS:** That is eleven, I think.

2 **BY THE COURT:** That is eleven, right. I need one
3 more.

4 **BY MR. EVANS:** All right, 28 will be S-11. He
5 knows the Defendant. He knows the Defendant's family.
6 He had an opinion that the Defendant was innocent, and
7 he has voted not guilty in a case before. I take that
8 back. He said he would automatically vote against the
9 death penalty, and then the Court ruled he had been
10 rehabilitated, but he said he would automatically vote
11 against it.

12 **BY THE COURT:** Mr. de Gruy.

13 **BY MR. DE GRUY:** We have no rebuttal, Your Honor.

14 **BY THE COURT:** Okay. I find that as to
15 Mr. Hearn, he was equivocal in his answers, and I did
16 allow him to be rehabilitated, but it was a close call
17 on his questions and answers in response to the death
18 penalty. So I find that his responses were sufficient
19 to be race neutral, and I do find that that was a race
20 neutral strike.

21 **BY MR. EVANS:** Your Honor, 29 will be S-12. He
22 is related to the Defendant. He has discussed this
23 case among family members and said that it would
24 affect him.

25 **BY THE COURT:** Is that the second cousin?

26 **BY MR. EVANS:** Yes, sir.

27 **BY THE COURT:** Okay.

28 **BY MR. EVANS:** And he said he loved him with all
29 his heart.

Selection of the jury - JURY OUT

1 **BY THE COURT:** And also, he is a preacher; is
2 that correct?

3 **BY MR. EVANS:** Yes, sir.

4 **BY THE COURT:** Okay. Mr. de Gruy?

5 **BY MR. DE GRUY:** No rebuttal, Your Honor. Just
6 so the record is clear, on the excuse of their
7 position on the death penalty, my offer of rebuttal as
8 to all of those including S-11 is that they were
9 accepting similarly situated whites, Ms. Holifield and
10 Collins.

11 **BY THE COURT:** And certainly not in relation to
12 Mr. Hearn, I would not agree with that.

13 **BY MR. DE GRUY:** Not in relation to Mr. Forrest.

14 **BY MR. EVANS:** And also, in response to that,
15 Your Honor, there are others that I would have liked
16 to have struck. What I have tried to do is find the
17 ones that had the strongest opposition to the death
18 penalty to strike.

19 **BY THE COURT:** Okay. Let me ask--

20 **BY MR. EVANS:** -- And that would also--

21 **BY THE COURT:** -- Wait a minute. Excuse me, I
22 didn't mean to cut you off, but was there rebuttal to
23 Mr. Forrest? I'm sorry.

24 **BY MR. DE GRUY:** The rebuttal, no.

25 **BY THE COURT:** He is the second cousin.

26 **BY MR. DE GRUY:** Yeah. The rebuttal, we don't
27 have rebuttal to Mr. Forrest. I understand your
28 ruling on Mr. Hearn, but our position is that--

29 **BY THE COURT:** --I understand that.

Selection of the jury - JURY OUT

1 **BY MR. DE GRUY:** --they are similar.

2 **BY THE COURT:** Okay. Then like I say, Mr.
3 Forrest is among other things the second cousin to
4 Mr. Flowers and is obviously deeply involved with him,
5 and therefore, that is race neutral. Now let's see;
6 what have I got?

7 **BY MR. EVANS:** That would automatically tender
8 30, Your Honor, because I am out.

9 **BY THE COURT:** Let me make sure that is correct.
10 (Pause while the Court recounts.) That is twelve. So
11 that takes us back to number 20.

12 **BY MR. DE GRUY:** D-7.

13 **BY THE COURT:** And number 25?

14 **BY MR. EVANS:** No. 23.

15 **BY MR. DE GRUY:** Number 23.

16 **BY THE COURT:** I'm sorry. I marked through it,
17 and I can't read my own writing. 23, Mr. Eskridge.

18 **BY MR. DE GRUY:** We accept.

19 **BY THE COURT:** Number 24, Ms. Cottingham.

20 **BY MR. DE GRUY:** We accept.

21 **BY THE COURT:** Number 26, Ms. Rogers.

22 **BY MR. DE GRUY:** D-8.

23 **BY THE COURT:** Number 27, Mr. Stuvee.

24 **BY MR. DE GRUY:** We accept.

25 **BY THE COURT:** And number 30, Ms. Legg.

26 **BY MR. DE GRUY:** That will be D-9.

27 **BY THE COURT:** All right, that tenders to you 31,
28 32, and 33. What do you say to 31?

29 **BY MR. DE GRUY:** Will be D-10.

Selection of the jury - JURY OUT

1 BY THE COURT: And 32?

2 BY MR. DE GRUY: D-11.

3 BY THE COURT: And 33?

4 BY MR. DE GRUY: We accept.

5 BY THE COURT: All right, that tenders to you --
6 let's see; I need two more, don't I? Is that right?
7 34 and 35. Ms. McChristion, number 34.

8 BY MR. DE GRUY: We will accept.

9 BY THE COURT: And number 35, Ms. McCoy.

10 BY MR. DE GRUY: D-12.

11 BY THE COURT: And that puts on the jury number
12 36, Wilma Loyce Kemp. Now let me go over the numbers
13 with you, and then I have got another ruling I want to
14 make. I have number 3, number 6, number 9, number 15,
15 number 16, number 18, number 23, number 24, number 27,
16 number 33, number 34, and number 36. Does that match
17 y'all's list?

18 BY MR. EVANS: Yes, sir.

19 BY MR. DE GRUY: Yes, sir.

20 BY THE COURT: Okay. The Court finds in relation
21 to the Batson challenge that I have already found that
22 the reasons given by the State are race neutral
23 reasons. I also find that they are not pretextual on
24 behalf of the State and that, and to the point where
25 they are merely a pretext to mask a discriminatory
26 intent by the State, that they all meet the Batson
27 rulings and are sufficient under the law.

28 Okay, let's get the jury out here, and let me
29 explain to them what the situation is, and we will

Jury called to box

1 send them off tonight. And then we will reconvene in
2 the morning at 9 o'clock.

3 **BY THE BAILIFF:** All of them?

4 **BY THE COURT:** Yeah, but I tell you what. Why
5 don't you bring-- yeah, let's do it this way. Bring
6 them out and seat them in the courtroom, and then I
7 will seat the twelve.

8 **BY THE BAILIFF:** You want them in the middle
9 section?

10 **BY THE COURT:** It doesn't matter to me, as long
11 as you have got them seated out there in some section.

12 JURORS ENTER THE COURTROOM.

13 **BY THE COURT:** I'm going to call out the names of
14 you who have been selected to serve on this jury and
15 ask you to come around and be seated in the jury box.
16 Ms. Emily Byars. Ms. Gay Elisabeth Evaldi. Ms. Lisa
17 Rodgers Bane. Ms. Holifield. Ms. Collins, Ms. Debbie
18 Collins. Ms. Lynn Oliver. Mr. Jason Eskridge. Ms.
19 Susan Annette Cottingham. Mr. James E. Stuvee. Mr.
20 Stanley Booker. Ms. Lashanda McChristion. And Ms.
21 Wilma Loyce Kemp.

22 Those of you who have not been selected to serve
23 on this jury, this will complete your service here
24 today, and I'm going to finally excuse you. This has
25 been a long process and a long two days, and I realize
26 that -- three days I guess it is, and I appreciate
27 your diligence to--

28 **BY MR. EVANS:** -- Judge, can we approach just a
29 second?

Rest of jurors released

1 **BY THE COURT:** Yeah.

2 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
3 JURY AS FOLLOWS:)

4 **BY MR. EVANS:** We have still got to get the
5 alternates.

6 **BY THE COURT:** Not from this bunch.

7 **BY MR. EVANS:** Oh, okay.

8 **BY THE COURT:** You have already used all them.

9 **BY MR. EVANS:** Okay, okay. My mind is not
10 working.

11 **BY MR. DE GRUY:** Are you sure we used them up?

12 **BY THE COURT:** We used all 36.

13 **BY MR. DE GRUY:** Oh, this is just the 36. We
14 sent the other ones home already?

15 **BY THE COURT:** Yeah, I sent them home to be back
16 at 9 o'clock.

17 **BY MR. DE GRUY:** Okay.

18 **BY MR. EVANS:** Okay. That's-- I wasn't thinking
19 about that either.

20 END BENCH CONFERENCE

21 **BY THE COURT:** (To the Court Reporter) I'm
22 right, aren't I?

23 **BY THE COURT REPORTER:** Yes, sir.

24 **BY THE COURT:** Okay. Ms. Burchfield is
25 instructing me on that.

26 They are going to let me let you go. (Laughter.)
27 I do appreciate very much your service. As can see,
28 it is essential that I have people willing to do this,
29 and I thank you very much for being here, but you are

Instructions given to jurors

free to go.

REST OF JURY PANEL LEAVES THE COURTROOM.

BY THE COURT: There is an oath you will have to take. I am getting Ms. Halfacre to give that to you, and then we have to swear the bailiffs. Then we are going to make arrangements, get y'all's arrangements made. Of course, as I told you, you are going to be sequestered for the duration of this trial. We have rooms for you at the Holiday Inn in Grenada. They will transport you up there. They have made arrangements for your meals tonight. I have made arrangements that you don't have to eat Holiday food every day. They will take you some other places to eat.

There are going to be four bailiffs. There will be two with you at night. There will be two with you during the day. They are there to help you in any way that you might, that you might need. They just cannot talk to you about this case, and you cannot talk to them about this case. They are not -- that is not what their function is. Their function is to see that you get taken care of, and they are going to report back to me and tell me that that is being done.

Now since you are sequestered, the televisions and the phones have been removed from your room. If you have cell phones, you cannot take them with you. Did you all bring your luggage?

BY A JUROR: I didn't.

BY THE COURT: You didn't?

Instructions given to jurors

1 **BY A JUROR:** I can have it taken to the Holiday
2 Inn.

3 **BY THE COURT:** Okay. If you do that and deliver
4 it, then the bailiffs will deliver that to you. The
5 fact is we can let you make -- well, they will make a
6 phone call for you or whatever, and then it can, while
7 y'all are eating and all, we will get that delivered
8 there. If you have cell phones -- how many of you
9 brought cell phones?

10 (Almost all jurors raise their hands.)

11 **BY THE COURT:** Okay.

12 **BY THE BAILIFF:** I can sack them up. (Laughter.)

13 **BY A JUROR:** I was going to put mine in my car.

14 **BY THE COURT:** Yes, ma'am. That will be fine.
15 Where are y'all's vehicles? Here? Okay. We are
16 going to make arrangements -- where is the Sheriff?

17 **BY THE SHERIFF:** Right here.

18 **BY THE COURT:** Can we park all of them back in
19 the secured area, their cars, at least until somebody
20 comes and gets them? Y'all want somebody to come get
21 your vehicles?

22 **BY A JUROR:** Somebody is going to get mine.

23 (Several jurors respond in the affirmative.)

24 **BY THE COURT:** We will see that you get to put
25 your cell phones and stuff -- I guess your luggage,
26 that's where it is. In that process, you leave your
27 cell phone in there. That will be the best process.
28 We will see that your vehicle is protected until
29 somebody comes and gets it. You will probably leave

Instructions given to jurors

1 the keys with the bailiffs who will get it to the
2 Sheriff, and we will see that that is done.

3 While I am thinking what else I have got to tell
4 them, you come here and give them the oath. If y'all
5 would stand, there is an oath, special oath for this
6 case. Y'all raise your right hand, please.

7 **BY THE CLERK:** Raise your right hand. You and
8 each of you do solemnly swear or affirm that you will
9 well and truly try the issue between the State of
10 Mississippi and Curtis Giovanni Flowers and a true
11 verdict give according to the law and evidence, so
12 help you God?

13 **BY THE JURORS:** I do.

14 **BY THE COURT:** You may be seated. Now I need all
15 the bailiffs up here. Raise your right hand and take
16 the oath.

17 **BY THE CLERK:** You and each of you do solemnly
18 swear or affirm that each of you will well and truly
19 wait on this jury and perform such special duties as
20 prescribed by the Court so help you God?

21 (Four Bailiffs respond in the affirmative.)

22 **BY THE COURT:** We are going to get started again
23 in the morning at 9 o'clock. We will not at that time
24 get started with testimony at that time. We have got
25 a couple of other jury matters that we have got to
26 tend to. I don't know how long it is going to take,
27 but I don't think it is going to take very long. Once
28 we get that tended to, basically we have got two more
29 jurors to seat is what it amounts to. As soon as we

Instructions given to jurors

1 get that done, then we are going to start with the
2 testimony sometime tomorrow. Because y'all are going
3 to be sequestered and you are not going to have a lot
4 else to do without televisions and stuff in your room,
5 we will work on Saturday so that we will be
6 accomplishing something on Saturday. We will not work
7 on Sunday. I may can make some arrangements for some
8 type of entertainment for you on Sunday. I am working
9 on that right now.

10 You are not to discuss this matter amongst
11 yourselves at this time because y'all haven't heard
12 any evidence whatsoever. You are not to form any
13 opinions about this case because of that. You are
14 not -- of course, you will be sequestered so nobody
15 can talk to you about it, but you don't let anybody
16 talk to you about it. Since you are sequestered, I am
17 confident there is not going to be any media coverage
18 that you will see, but if it is and it gets by the
19 security, then you do not pay any attention to that.

20 Any other instructions y'all want me to give the
21 jury?

22 **BY MR. EVANS:** No, sir. I can't think of
23 anything.

24 **BY MR. DE GRUY:** No, Your Honor.

25 **BY THE COURT:** Okay, I'm going to turn you over
26 to the bailiffs, and they will see to getting y'all
27 situated and all for the night, and I will see you in
28 the morning around 9 o'clock.

29 JURY LEAVES THE COURTROOM.

Court calls out race of jury list - JURORS OUT

1 **BY THE COURT:** Gentlemen, I have got one more
2 record I want to make before we leave. I want to read
3 into the record the gender and racial makeup of the
4 jury. We will also put one of the jury lists in the
5 file as a part of the permanent record that reflects
6 that also. Number 1, Ms. Oliver was a white female.
7 Number 2, Ms. Fielder was a white female. Number 3,
8 Ms. Byars is a white female. Number 4, Mr. Hamer is a
9 black male. Number 5, Mr. Sawyer is a black--

10 **BY MR. HILL:** -- Judge. You said Hamer.

11 **BY MR. EVANS:** He is not on there.

12 **BY MR. CARTER:** I think you said Fielder too.

13 **BY THE COURT:** I'm reading the whole list.

14 **BY MR. EVANS:** Oh, okay. Okay.

15 **BY THE COURT:** That is what is important. We are
16 going to come back and designate who is on. Hamer is
17 a black male. Lester Sawyer is a black male. Ms.
18 Evaldi is a white female. That is number 6. Number
19 7, Ms. Braswell is a white female. Number 8, Ms.
20 Golden was a black female. Number 9, Ms. Bane is a
21 white female. Number 10, Mr. Hudson is a white male.
22 Number 11, Ms. Pearson is a white female. Number 12,
23 Mr. Kendle is a black male. Number 13, Ms. Curry is a
24 black female. Number 14, Ms. Carodine is a black
25 female. Number 15, Ms. Holifield is a white female.
26 Number 16, Ms. Collins is a white female. Number 17,
27 Ms. Pittman is a black female. Number 18, Ms. Oliver
28 is a white female. Number 19, Mr. Collins is a white
29 male. Number 20, Mr. Barbour is a white male. Number

Court calls out race of jury list - JURORS OUT

1 21, Mr. Robinson is a black male. Number 22, Mr.
2 Minniweather is a black male. Number 23, Mr.
3 Eskridge is a white male. Number 24, Ms. Cottingham
4 is a white female. Number 25, Ms. Robinson is a black
5 male. Number 26, Ms. Rogers is a white female.
6 Number 27, Mr. Stuvee is a white male. Number 28,
7 Mr. Hearn was a black male. Number 29, Mr. Forrest is
8 a black male. Number 30, Ms. Legg is a white female.
9 Number 31, Ms. Wood is a white female. Number 32, Ms.
10 Flowers is a white female. Number 33, Ms. Booker is a
11 black male. Number 34, Ms. McChristion is a black
12 female. Number 35, Ms. McCoy is a white female, and
13 number 36, Ms. Kemp is a white female.

14 Of that bunch, the jury is made up of ten whites
15 and two blacks; is that correct? That is correct,
16 isn't it?

17 **BY MR. EVANS:** Yes, sir.

18 **BY MR. DE GRUY:** Yes, sir.

19 **BY THE COURT:** Like I say, I will see that a
20 written document reflecting that gets inserted in the
21 record. The Court Reporter will do that.

22 **BY MR. DE GRUY:** Your Honor, I assume that the
23 Clerk has taken all of the, the original copy of all
24 the questionnaires which also indicate their races for
25 all the jurors. I think that those should be
26 preserved. At least the Supreme Court wants those
27 preserved.

28 **BY THE COURT:** They should be preserved until
29 such time as by order of the Court they are released.

Court Recessed for Day on 2/4/04

1 How about that? (To the Clerk) You just hold them
2 until somebody tells you different. Okay?

3 Okay, that will get us for tonight. See y'all in
4 the morning at 9:00.

5 COURT WAS RECESSED FOR THE DAY ON 2/4/04 AT
6 APPROXIMATELY 7:15 PM.

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Conference with juror - JURY OUT

1 (ON FEBRUARY 5, 2004, THE COURT FIRST MET WITH ALL
2 COUNSEL AND THE BAILIFF IN CHAMBERS WITHOUT THE PRESENCE OF
3 THE COURT REPORTER. THEN THE COURT REPORTER WAS CALLED IN,
4 AND WITH THE COURT, ALL COUNSEL, THE DEFENDANT, AND JUROR
5 STANLEY BOOKER, PRESENT, THERE WAS THE FOLLOWING:)

6 BY THE COURT: Okay, we've got everybody in here.
7 Hello, Mr. Booker.

8 BY JUROR MR. BOOKER: Hello. How are you doing?

9 BY THE COURT: All right. Mr. Booker, let the
10 record reflect we are in chambers with the Defendant
11 and Counsel for both sides and Mr. Stanley Booker, who
12 was chosen last night as one of the members of this
13 jury. Overnight or maybe this morning -- he can
14 better explain it -- he contacted, according to the
15 information I have, he contacted one of the bailiffs
16 and gave her some information that would affect his
17 status as a juror on this case. Mr. Booker, I'm just
18 going to let you tell this in your own words if you
19 will.

20 BY JUROR MR. BOOKER: Yeah, I will. I mean
21 basically last night I was ironing my clothes. Then
22 roughly after that, I started reading my Bible. I
23 prayed about it, and I asked the Lord to give me an
24 answer. Should I be here, or what should I do? And
25 this morning, you know, I came to the conclusion, and
26 you know it was, it was a decision that was made that
27 I shouldn't be here, and no matter what the facts that
28 was given, that I would presume that the Defendant
29 is -- how would I say it? -- it would be a hung jury

Conference with juror - JURY OUT

1 because I have already made my mind up.

2 **BY THE COURT:** Which way have you made your mind
3 up, Mr. Booker?

4 **BY JUROR MR. BOOKER:** On the Defendant.

5 **BY THE COURT:** Okay.

6 **BY JUROR MR. BOOKER:** And I concluded that it
7 wouldn't be fair on either party, and you know, that
8 was a decision I made. And after that, that's what I
9 told the bailiff because no one informed me what to
10 say or how to say it. I just came out and I said
11 that.

12 **BY THE COURT:** All right. Let me make sure I
13 have got this plain for the record in here. Nobody
14 contacted you. You took the initiative and contacted
15 the bailiff this morning; is that correct?

16 **BY JUROR MR. BOOKER:** That's correct.

17 **BY THE COURT:** And you told her these things; is
18 that correct?

19 **BY JUROR MR. BOOKER:** Yes.

20 **BY THE COURT:** Mr. Booker, are you telling me
21 that you could not be a fair and impartial juror for
22 both sides?

23 **BY JUROR MR. BOOKER:** That's correct.

24 **BY THE COURT:** Okay. Gentlemen, do y'all have
25 any questions that you would like to ask?

26 **BY MR. EVANS:** No, sir. I think he has covered
27 it.

28 **BY MR. CARTER:** I have one. Go ahead, Andre.

29 **BY MR. DE GRUY:** Mr. Booker, you understand that

Conference with juror - JURY OUT

1 you are -- you will be instructed by the Court that
2 you are to presume the Defendant is innocent at this
3 time?

4 **BY JUROR MR. BOOKER:** Yeah, that is correct. I
5 mean I am under oath. I would not go to no media, no
6 nothing.

7 **BY MR. DE GRUY:** But, and you haven't heard any
8 evidence from the State yet?

9 **BY JUROR MR. BOOKER:** No.

10 **BY MR. DE GRUY:** And yesterday we went through
11 this and asked these questions. Are you telling us
12 now that -- you know, I understand you don't want to
13 be here, and the other eleven didn't want to be here.
14 But without, no matter what evidence is presented, you
15 couldn't consider anything but not guilty?

16 **BY JUROR MR. BOOKER:** That's correct. I mean it
17 just, it is just something I prayed about. It is just
18 something that, you know, I have been through because
19 I was -- it was last year. I was at a store that was
20 being robbed. And it was at gunpoint that, you know,
21 the cashier, she was in the inside. She was being
22 robbed, and I seen it happening. I had my gun on the
23 side, and it was two guys. The one came out, and for
24 that just instant, four seconds after that, the other
25 guy came out with a machine gun. And we was probably
26 about five feet from that, and it could have went
27 either way. And like I said, you know, the Lord told
28 me not to do it, and he never looked our way. He shot
29 at the security camera and then left, and that's the

Conference with juror - JURY OUT

1 reason why I believe what I believe. So I prayed
2 about it, and that's the decision that I came to. You
3 know, I mean you may look at it being unfair, but that
4 is just how I see it. It was just said to me that
5 this is not for me. I am just being honest. Nobody
6 told me what to do, just me.

7 **BY MR. CARTER:** So if they, if the State put on
8 evidence and showed you beyond a reasonable doubt that
9 Mr. Flowers did it, you still would vote not guilty?
10 Is that what you are saying?

11 **BY JUROR MR. BOOKER:** I mean it just -- I have
12 read about some things that happened in the papers
13 about this trial in the past, and I told you that at
14 the beginning. And I don't believe -- without a
15 shadow of a doubt if it was given reason of any
16 evidence, I would lean either way. I mean I just want
17 to be fair on it. I'm not going against the Defendant
18 or with him. You know, it just that's my -- that is
19 just what I prayed about last night, and that's what I
20 concluded on.

21 **BY MR. CARTER:** Let me make sure I understand you
22 now. So you are saying that you believe he is
23 innocent, and you should at this point, not
24 necessarily -- he is presumed innocent at this point.
25 And you are saying that you believe that he is
26 innocent, but what I'm trying to find out though; if
27 we had a trial and they put on witnesses who gave
28 statements that clearly beyond a reasonable doubt
29 convinced you that Mr. Flowers, in fact, committed

Conference with juror - JURY OUT

1 this crime; you still would vote not guilty despite
2 that evidence?

3 **BY JUROR MR. BOOKER:** I just look at it I would
4 be unfair, plain and simple.

5 **BY MR. CARTER:** How would you be unfair?

6 **BY JUROR MR. BOOKER:** I mean my mind is already
7 made up. I am just being honest. I would rather just
8 be honest and not be dishonest, and it's not, like I
9 said, I don't know the Defendant. I mean I clearly
10 said that I knew it might be some of his relatives,
11 but it is just clearly of what I already have known
12 from the past of what I have read, and how the way I
13 would waiver it. I mean it is just something I have
14 prayed about. I mean I have, I hope that you will
15 appreciate my honesty of it because I look at it just
16 being honest. I can't really explain how or why.
17 Just like what I, like the robbery thing. I can't
18 explain that. It is just something told me not to do
19 it, and I didn't. You know, it is just, I mean that
20 is just how the way it is.

21 **BY MR. CARTER:** Do you know the Flowers? Do you
22 know his parents?

23 **BY JUROR MR. BOOKER:** No, I don't.

24 **BY MR. CARTER:** His sisters?

25 **BY JUROR MR. BOOKER:** (Mr. Booker shakes his
26 head.)

27 **BY THE COURT:** Anything else?

28 **BY MR. EVANS:** No.

29 **BY THE COURT:** Thank you, Mr. Booker. I'm going

Conference with juror - JURY OUT

1 to let you go out there and go with the bailiff for
2 right now, and we will be back; we will talk to you in
3 a minute.

4 (Mr. Booker leaves chambers.)

5 **BY MR. EVANS:** He has clearly said that he
6 couldn't be fair and impartial.

7 **BY MR. CARTER:** Now Your Honor, I just asked him
8 twice if he heard the evidence and it convinced him
9 beyond a reasonable doubt that Mr. Flowers committed
10 the crime, would he still vote not guilty, and neither
11 time did he say he would vote not guilty irrespective
12 or despite the evidence.

13 **BY MR. EVANS:** I think he was real clear about
14 what he said.

15 **BY THE COURT:** Well, there is no doubt of what he
16 said. He said he can't be fair and impartial. I mean
17 nobody can interpret that any other way. I don't care
18 how he worded it. He said it over and over and over
19 again that he can't be fair and impartial, and if he
20 sits on this jury, that we are going to go through a
21 week's worth of trial maybe to no avail. I don't know
22 what the other eleven jurors will do.

23 **BY MR. CARTER:** Just for the record, Your Honor,
24 the impression I got from what he said was that he
25 felt quite uncomfortable serving on a jury, and he
26 didn't want to do it. But he didn't, in fact, say
27 that he could not hear the evidence and make a
28 decision based on the evidence.

29 **BY THE COURT:** Well, the record will speak for

Discussion in chambers - JURY OUT

1 itself. That is my opinion on it.

2 **BY MR. CARTER:** Yes, sir.

3 **BY THE COURT:** Now what do I do?

4 **BY MR. EVANS:** Well, we still have not even
5 picked the alternates yet. I would suggest that we
6 try to get three alternates instead of two if possible
7 now since we are already going to have to substitute
8 one in his place.

9 **BY THE COURT:** I'm going to dismiss him from the
10 jury. So I'm just looking for an alternative.

11 **BY MR. DE GRUY:** And our objection is noted for
12 the record.

13 **BY THE COURT:** Yeah.

14 **BY MR. EVANS:** I personally -- I think
15 procedurally--

16 **BY THE COURT:** --We could do it with three
17 alternates, or I was thinking about giving y'all -- it
18 would, there is a possibility that could have affected
19 your peremptory challenges as to how they were done,
20 and I was thinking about just picking another juror
21 before we pick the alternates and giving y'all extra
22 peremptories for that. Or we could do it with three
23 by just picking three alternates. Well, it won't be
24 three alternates. Whoever is the first one will be on
25 the jury.

26 **BY MR. EVANS:** Right, but they would technically
27 be an alternate since this jury has already been
28 sworn.

29 **BY THE COURT:** Well, that is true.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED

871-1020

VOLUME

14 of 21

EXHIBIT

ELECTRONIC DISK

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Discussion in chambers - JURY OUT

1 **BY MR. EVANS:** My suggestion to the Court, if the
2 Court wants to give any extra strikes since we are
3 going to have three alternates, why don't we have
4 three strikes each instead of the two that we normally
5 have for alternates.

6 **BY THE COURT:** Well, I will if they are
7 alternates. You have got to give one per alternate.
8 You know, I guess the Supreme Court will tell me
9 whether I'm right about all this or not, but this is
10 what my ruling is going to be. So I would like
11 y'all's input as to what to do now as far as what
12 y'all's position is since we are going to go through
13 this procedure.

14 **BY MR. EVANS:** My only thing--

15 **BY MR. DE GRUY:** -- I think we are going to have
16 to pick three alternates.

17 **BY THE COURT:** Do what?

18 **BY MR. DE GRUY:** I think picking three
19 alternates -- I mean the number of alternates -- we
20 obviously have to have at least two alternates now
21 because one is going to serve.

22 **BY THE COURT:** Oh, sure. Yeah.

23 **BY MR. DE GRUY:** But three alternates, picking
24 three alternates or attempting to pick three
25 alternates today--

26 **BY THE COURT:** --Right, and by this -- I want you
27 to understand I know you are preserving your objection
28 to me releasing the juror, but faced with that, then
29 we have to do something.

FILED

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Discussion in chambers - JURY OUT

1 **BY MR. DE GRUY:** Right.

2 **BY THE COURT:** And I would like for us to agree
3 on whatever that procedure is. If it comes back, it
4 is not going to come back on that procedure. It would
5 be coming back on me letting him go, and so--

6 **BY MR. DE GRUY:** I can't think of doing anything
7 other than what Mr. Evans is suggesting.

8 **BY THE COURT:** Okay. Three alternates?

9 **BY MR. DE GRUY:** Three alternates.

10 **BY THE COURT:** Three alternates, three strikes
11 each. How about that?

12 **BY MR. EVANS:** That is fine, and let me bring
13 this out because I know I have practiced before this
14 Judge all time and y'all don't. Normally what the
15 Judge does for both sides, and the Court may do it
16 different in this case, but normally we have three
17 strikes, and we can use all of them picking the first
18 alternate, or we can use them any way we want to.
19 Just so that both sides will understand, is that the
20 way the Court is planning on doing it this time?

21 **BY THE COURT:** I think in light of the situation
22 because actually we are picking a twelfth juror --
23 whether you call it an alternate or not, we are
24 picking the twelfth juror -- that you ought to be
25 able to use it just like you would if we were in
26 regular voir dire. So you could use, if you want to
27 use all three of them on the front end, you can do
28 that, or you can use one, submit one, and let y'all do
29 it, and then come back that way. Just the way we have

Discussion in chambers - JURY OUT

1 done the other.

2 BY MR. DE GRUY: Let's see if I am understanding.

3 BY THE COURT: Now we are going to tend -- now we
4 have got, now we have got to tender eight.

5 BY MR. DE GRUY: Tender three.

6 BY THE COURT: I mean we have got to get a panel
7 of eight.

8 BY MR. DE GRUY: Of nine.

9 BY MS. FERRARO: Nine.

10 BY THE COURT: Nine. Okay, we have got to get a
11 panel--

12 BY MS. FERRARO: -- The State will tender three.

13 BY MR. DE GRUY: Three strikes and three strikes.

14 BY MR. EVANS: Yeah.

15 BY THE COURT: Right.

16 BY MR. EVANS: Right.

17 BY MR. DE GRUY: And then the State would tender
18 three?

19 BY THE COURT: That's right. And the first one
20 of those would be -- the first one on the list would
21 be the twelfth juror. The other two would be the
22 alternates.

23 BY MR. DE GRUY: Right. The first alternate
24 would just--

25 BY THE COURT: -- The first alternate would
26 become a juror. The other two would be alternate
27 number one and alternate number two.

28 BY MR. EVANS: That will be fine.

29 BY MR. DE GRUY: I think that is how we need to

More Individual Voir Dire - JURY OUT

1 do it.

2 BY THE COURT: Okay.

3 (THE HEARING IN CHAMBERS WAS CONCLUDED.)

4 (The Court excused Mr. Booker as a juror out of the
5 presence of the Court Reporter. While the Court and the
6 Court Reporter were in chambers, the Clerk had called the
7 roll of the third panel or venire of jurors and given them
8 the first oath to answer questions.)

9 (THE SHERIFF THEN OPENED COURT ON FEBRUARY 5, 2004,
10 WITH ALL COUNSEL AND THE DEFENDANT PRESENT AND WITH THE
11 JURORS WHO HAD BEEN PREVIOUSLY SELECTED AND SWORN TO TRY THE
12 CASE IN THE BOARD ROOM AND WITH THE JURORS WHO HAD BEEN
13 PREVIOUSLY QUALIFIED BUT HAD NOT HAD THE OPPORTUNITY FOR
14 INDIVIDUAL VOIR DIRE OUT IN THE HALLWAY.)

15 BY THE COURT: The jurors are out, aren't they?

16 BY THE SHERIFF: All the jurors are out.

17 BY THE COURT: Okay. According to my notes, we
18 are starting with Laura Robertson; is that correct?

19 BY MR. EVANS: Yes, sir. That's what I have got.

20 BY THE COURT: Okay, that's who I need.

21 (JUROR NO. 40, MS. LAURA RENEA ROBERTSON, enters
22 the courtroom.)

23 INDIVIDUAL VOIR DIRE BY THE COURT:

24 Q. Would you state your name, please.

25 A. Laura Robertson.

26 Q. Ms. Robertson, you need to, if you will, speak up
27 so they can hear you; okay?

28 A. Okay. I will try.

29 Q. Ms. Robertson, have you ever heard anything about

More Individual Voir Dire - JURY OUT

this case?

A. Yes, sir.

Q. How did you hear about it?

A. From the beginning? A phone call, papers, people talking.

Q. Okay, so you have heard it through the media; is that correct?

A. Yes.

Q. Okay, and street talk and gossip; is that correct?

A. Yes, sir.

Q. All right. Did you know any of the victims?

A. No, sir.

Q. Did you know any of the victims' family?

A. Yes, sir.

Q. Who did you know?

A. Um, I know the Rigbys.

Q. Okay, and how do you know them?

A. My brother grew up with them.

Q. Okay. Do you know the Flowers?

A. No, sir.

Q. Either Mr. Flowers or any of his family?

A. No, sir.

Q. Based on -- well, let me go back to the Rigbys. Have you ever had any conversations with them about this case?

A. No, sir.

Q. Based on what you have heard on the media or in the community, have you formed an opinion as to the guilt or innocence of Mr. Flowers?

More Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Would that opinion keep you from being a fair and
3 impartial juror?

4 A. I don't think so.

5 Q. Okay.

6 A. No, sir. It wouldn't.

7 Q. Ms. Robertson, if you were seated as a juror, could
8 you-- (To people in the courtroom) I can't hear this lady if
9 y'all talk now.

10 If you were seated as a juror, could you listen to the
11 evidence that comes from the witness stand, and at the end of
12 the trial take my instructions on the law and apply them to
13 the facts as you see them, discuss those things with your
14 fellow jurors, and reach a decision based on that rather than
15 what you may have heard or maybe any relationship you have
16 with some of the family?

17 A. Yes, sir.

18 Q. Do you know of any reason that you could not be
19 fair and impartial?

20 A. Really?

21 Q. Yes, ma'am.

22 A. I am incredibly soft-hearted, and I would probably
23 cry a lot. And I'm not -- I am moved by all sorts of things.

24 Q. Okay. Would that keep you from being fair and
25 impartial to both sides?

26 A. Possibly.

27 Q. Okay. Thank you, ma'am.

28 BY THE COURT: Mr. Evans.

29 BY MR. EVANS: No questions, Your Honor.

More Individual Voir Dire - JURY OUT

1 **BY MR. DE GRUY:** Just a few questions, Your
2 Honor.

3 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

4 Q. Ms. Robertson, are you telling us that the emotions
5 of sitting on a trial would prevent you from making a
6 decision based on the evidence?

7 A. Probably. Yes, sir.

8 Q. You are saying probably?

9 A. I am sure it would. I'm about to cry right now.

10 Q. Okay. Thank you.

11 **BY MR. DE GRUY:** I have no more questions.

12 **BY THE COURT:** Thank you, Ms. Robertson. You may
13 step down.

14 (Juror 40, Ms. Robertson, leaves the courtroom.)

15 **BY THE COURT:** I'm going to excuse her for cause.
16 Any objection?

17 **BY MR. EVANS:** No, sir.

18 **BY MR. DE GRUY:** No objection.

19 **BY THE COURT:** Bobby Lester.

20 (JUROR NO. 41, MR. BOBBY STEVEN LESTER, enters the
21 courtroom.)

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. Would you state your name, please, sir.

24 A. Bobby Steven Lester.

25 Q. Mr. Lester, have you ever heard anything about this
26 case?

27 A. Yes, sir.

28 Q. How did you get that information?

29 A. Just from news off the street, radio, newspaper.

More Individual Voir Dire - JURY OUT

1 Q. Community talk and media coverage?

2 A. Yes, sir.

3 Q. Did you know any of the victims?

4 A. Yes, sir.

5 Q. Who did you know?

6 A. I knew Ms. Tardy.

7 Q. Okay, do you know any of her family?

8 A. Yes, sir.

9 Q. How about any of the other victims?

10 A. I knew who they were, but I did not know them
11 personally.

12 Q. How about their family, the other victims' family?

13 A. Some of the family, yes.

14 Q. Have you ever had any discussions with any of the
15 family concerning this matter, or have they ever discussed it
16 in your presence?

17 A. No, sir.

18 Q. Do you know Mr. Flowers?

19 A. No, sir.

20 Q. Do you know any of his family?

21 A. Not that I'm aware of.

22 Q. Mr. Lester, based on what you have heard from the
23 media and the fact that you knew some of the victims or their
24 families, have you formed an opinion as to the guilt or
25 innocence of Mr. Flowers?

26 A. I have an opinion; yes.

27 Q. Okay, would that opinion keep you from being a fair
28 and impartial juror?

29 A. Probably.

More Individual Voir Dire - JURY OUT

1 Q. All right, sir.

2 BY THE COURT: Mr. Evans?

3 BY MR. EVANS: No questions, Your Honor.

4 BY MR. DE GRUY: No questions, Your Honor.

5 BY THE COURT: Thank you, Mr. Lester. You may
6 step down.

7 (Juror 41, Mr. Lester, leaves the courtroom.)

8 BY THE COURT: Okay, I'm going to excuse him for
9 cause. Any objection?

10 BY MR. EVANS: No, sir.

11 BY MR. DE GRUY: No objection.

12 BY THE COURT: Robert Shelton Hedgepeth.

13 (JUROR NO. 42, MR. ROBERT SHELTON HEDGEPEETH, enters
14 the courtroom.)

15 INDIVIDUAL VOIR DIRE BY THE COURT:

16 Q. Would you state your name, please, sir.

17 A. Robert Shelton Hedgepeth.

18 Q. Mr. Hedgepeth, have you ever heard anything about
19 this case?

20 A. Yes, sir.

21 Q. How did you hear that?

22 A. Through the news and word of mouth.

23 Q. All right, was the word of mouth community talk,
24 street talk or gossip?

25 A. Yes, sir.

26 Q. Did you know any of the victims?

27 A. Yes, sir.

28 Q. Who did you know?

29 A. I knew BoBo. I knew Ms. Rigby, and I also knew

More Individual Voir Dire - JURY OUT

Ms. Bertha.

Q. Do you know their families?

A. Yes, sir.

Q. Have you ever had any discussions with any of them concerning this, or have they ever discussed it in your presence?

A. No, sir.

Q. How close friends were you with any of these people?

A. Real close with Ms. Rigby's boys.

Q. Okay. Do you know the Flowers, Mr. Flowers or his family?

A. No, sir.

Q. Okay. Based on what you have heard and the relationships you had, Mr. Hedgepeth, have you formed an opinion as to the guilt or innocence of Mr. Flowers?

A. Pretty much so.

Q. All right. Would that opinion keep you from being a fair and impartial juror for both sides?

A. No, sir. I don't think so.

Q. Okay. Mr. Hedgepeth, if you were seated as a juror in this case, could you listen to the evidence that comes from the witness stand and take my instructions on the law at the end of the case, apply them to the facts as you see them, discuss that with your fellow jurors, and reach a decision based on those things rather than what you have heard or what relationships you have had?

A. Yes, sir.

Q. Mr. Hedgepeth, do you have a religious or personal

More Individual Voir Dire - JURY OUT

1 belief that would prohibit you from imposing the death
2 penalty?

3 A. No, sir.

4 Q. Okay. If this case were to go to trial, Mr.
5 Hedgepeth, the first phase would be the phase to determine
6 whether or not Mr. Flowers is guilty of this. At that time
7 the jury would have to unanimously find beyond a reasonable
8 doubt that he was guilty before they could return a verdict.
9 If they did that, we would go to a second phase. That would
10 be the sentencing phase, and the sentencing phase would
11 include only two options, either death or life in prison. At
12 that time the State would put on evidence of aggravating
13 circumstances which would tend to warrant the death penalty.
14 The Defendant would put on mitigating circumstances which
15 would tend to lean toward the life sentence rather than the
16 death sentence. I would give the jury an instruction that
17 included all those factors, and it would explain the
18 procedure about how the jury would take those factors and
19 arrive at a verdict in this case. Do you understand that
20 that is what the procedure would be?

21 A. Yes, sir.

22 Q. Okay. If I instructed you or instructed the jury
23 that the law authorized the imposition of the death penalty
24 and you found from the evidence it warranted it, could you
25 impose the death penalty?

26 A. Yes, sir.

27 Q. All right, and on the opposite side of that, if you
28 were a juror at that phase, could you listen to the evidence
29 of the aggravating circumstances and the mitigating

More Individual Voir Dire - JURY OUT

1 circumstances and take my instructions on the law and then
2 consider both options, or would you automatically vote for
3 the death penalty?

4 A. Can you repeat part of that again, please.

5 Q. Okay. If at that stage -- when you are at that
6 stage, could you listen to all of the evidence about the
7 aggravating circumstances and the mitigating circumstances
8 and consider my instructions in that regard and then consider
9 both options, either life or death, or would you, in fact,
10 automatically vote for the death penalty?

11 A. Death penalty.

12 Q. All right, sir.

13 **BY THE COURT:** Mr. Evans.

14 **BY MR. EVANS:** Very briefly, Your Honor.

15 INDIVIDUAL VOIR DIRE BY MR. EVANS:

16 Q. Mr. Hedgepeth, I want to make sure that I
17 understand what you are saying. Now in the second phase the
18 Judge will tell the jury things that they can consider that
19 the Defense puts on, things that the jury can consider that
20 the State puts on. What the State will be putting on is
21 considered aggravating factors. It would be things to try to
22 show the jury that the death penalty was the appropriate
23 sentence. What the Defense would be putting on is mitigating
24 factors. It may be anything about the Defendant's life, how
25 he grew up, or anything else in an attempt to show the jury
26 that a life sentence on this particular case would be the
27 appropriate sentence. What we are attempting to do is find a
28 jury that would not automatically lean one way or the other.
29 So the question that I'm going to ask you is this. Would you

More Individual Voir Dire - JURY OUT

1 go into that phase and listen to both sides and consider both
2 options, the death penalty and life and consider what I put
3 on and what the Defense puts on, or would you automatically,
4 without even considering both sides, vote for the death
5 penalty?

6 A. I would vote for the death penalty.

7 BY MR. EVANS: Okay, nothing further.

8 BY MR. DE GRUY: No questions, Your Honor.

9 BY THE COURT: Thank you, Mr. Hedgepeth. You may
10 step down.

11 (Juror 42, Mr. Hedgepeth, leaves the courtroom.)

12 BY THE COURT: I'm going to excuse him for cause.
13 Any objection?

14 BY MR. EVANS: No objection.

15 BY MR. DE GRUY: No objection.

16 BY THE COURT: Number 43, Libby Flowers.

17 (JUROR NO. 43, MS. LIBBY L. FLOWERS, enters the
18 courtroom.)

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. State your name, please.

21 A. Libby Flowers.

22 Q. Ms. Flowers, have you ever heard anything about
23 this case?

24 A. I heard something about it.

25 Q. How did you hear that?

26 A. Word of mouth. On the news.

27 Q. Okay. Do you know -- your name is Flowers. Are
28 you kin to him?

29 A. (Juror nods her head.)

More Individual Voir Dire - JURY OUT

1 Q. How are you kin to him?

2 A. Through marriage.

3 Q. Who are you married to?

4 A. Michael Flowers.

5 Q. Okay, and he is a brother?

6 A. No, they cousins.

7 Q. Cousins?

8 A. (Juror nods her head.)

9 Q. Of Curtis, okay. Have you heard it discussed in
10 the family?

11 A. No, not really. Not in his family.

12 Q. Did you know any of the victims?

13 A. No, I didn't.

14 Q. Did you know or do you know any of their families?

15 A. No.

16 Q. Ms. Flowers, based on the fact that you are kin by
17 marriage to Mr. Flowers and based on the things that you may
18 have heard from the media or in the community, have you
19 formed an opinion as to the guilt or innocence of Mr.
20 Flowers?

21 A. It's hard to say. We don't know the facts.

22 Q. I understand that, and that's what I'm getting at.
23 Have you got an opinion right now?

24 A. Right now?

25 Q. Uh-hum.

26 A. I would say he didn't do it.

27 Q. Okay. Ms. Flowers, do you think you can be a fair
28 and impartial juror based on the fact that you have got that
29 opinion? And that is fair and impartial for both sides?

More Individual Voir Dire - JURY OUT

1 A. It's a hard question. Yeah, I probably could.

2 Q. Okay. If you were seated as a juror, could you sit
3 over there in the jury box, listen to the evidence that comes
4 from the witness stand, take my instructions on the law at
5 the end of the case, apply them to the facts, discuss that
6 with your fellow jurors, and decide this case based on what
7 you heard in court to the exclusion of what you have heard
8 out of court or what you have read in the news media and to
9 the exclusion of the fact that you are related by marriage to
10 the Defendant?

11 A. Yeah.

12 Q. Okay. This is a case that -- it depends on what
13 the jury does, but it could involve the death penalty. If at
14 the first phase of the trial, the jury unanimously finds
15 beyond a reasonable doubt that Mr. Flowers is guilty of these
16 acts, then -- and returns a verdict in that form, then we
17 would go to the second phase at which time the State would
18 put on additional evidence. And that evidence would consist
19 of aggravating circumstances which would tend to warrant the
20 death penalty. The Defendant would put on mitigating
21 circumstances which could be a lot of things, things about
22 his personal life and how he grew up and those type of
23 things. And those would be put on for the purpose of leaning
24 toward the life sentence rather than the death sentence.
25 After that evidence was put on, I would give the jury an
26 instruction that included all those factors with an
27 instruction to the jury about how to proceed in determining
28 their verdict in this case. Do you understand that that is
29 what the procedure would be?

More Individual Voir Dire - JURY OUT

1 A. Yes.

2 Q. Okay. If at that time then I instructed the jury
3 that the law authorized the imposition of the death penalty
4 and you found that the evidence warranted it, could you
5 impose the death penalty?

6 A. No.

7 Q. Thank you, ma'am.

8 **BY MR. EVANS:** One second, Your Honor.

9 INDIVIDUAL VOIR DIRE BY MR. EVANS:

10 Q. How are you doing, Ms. Flowers?

11 A. Okay.

12 Q. Ms. Flowers, I think you understand; you have been
13 through parts of this. What we are attempting to do is get a
14 jury to sit over here and listen to the facts of the case
15 that doesn't have any outside influences, if possible a jury
16 that does not have connections with one side or the other so
17 that they can come in, be fair and impartial to both sides.
18 Now you have told the Court that you were related by marriage
19 to the Defendant, so I assume you know him?

20 A. (Juror nods her head.)

21 Q. How long have you been married to his cousin?

22 A. About 12 years.

23 Q. Okay. So y'all were married back when this
24 happened?

25 A. (Juror nods her head.)

26 Q. And the Court Reporter is having to take down what
27 you say, so you need to answer out so she can hear you.

28 A. Can't hear me?

29 Q. All right, so you have talked with the family about

More Individual Voir Dire - JURY OUT

1 this since it first happened; is that right?

2 A. No, I ain't discussed it with his family.

3 Q. You discussed it with your husband?

4 A. Yeah, we discussed it.

5 Q. Okay, that is his family, isn't it?

6 A. Well, I thought you meant his immediate family.

7 Q. No, I'm talking about his relatives.

8 A. Okay.

9 Q. And based upon your conversations with his family,
10 you have an opinion at this time that he is not guilty; is
11 that right?

12 A. That's right.

13 Q. And that is a pretty strong opinion, isn't it?

14 A. Pretty strong.

15 Q. And basically, nothing that the State put on at
16 trial is going to change that opinion, is it?

17 A. Um, I don't know.

18 Q. Right now you are saying that you don't know that
19 anything that we put on could ever change that opinion?

20 A. That's about right, you know.

21 Q. And again, and nobody is judging you because every
22 juror knows different things, has different connections with
23 families. But wouldn't you agree with me that because of
24 your relationships with him, because you already have an
25 opinion that probably could not be changed no matter what we
26 put on, that would keep you in this particular case from
27 being fair and impartial to the State, wouldn't it?

28 A. (No response.)

29 Q. And by fair and impartial, you are going to

More Individual Voir Dire - JURY OUT

1 automatically lean in his favor no matter what, aren't you?

2 A. Well, sometimes you do.

3 Q. Yes, ma'am.

4 A. I'm his family.

5 Q. Yes, ma'am. And I understand that, and that's what
6 you're saying in this case, isn't it?

7 A. (Juror nods her head.)

8 Q. So in this particular case, you could not be a fair
9 and impartial juror because of those connections, could you?

10 A. With all the facts, yeah, because you can weigh
11 your facts.

12 Q. Okay. Well, you are kind of going both ways. I
13 need--

14 A. -- no--

15 Q. --to know what you are saying. Aren't you telling
16 me that you would automatically lean in his favor because of
17 what--

18 BY MR. DE GRUY: -- Your Honor, the law requires
19 her to lean in his favor.

20 BY MR. EVANS: No, it does not.

21 BY MR. DE GRUY: A presumption of innocence.

22 BY MR. EVANS: We are not talking about a
23 presumption of innocence. We are talking about
24 automatically leaning no matter what the evidence
25 shows.

26 BY MR. DE GRUY: I think she has clearly said she
27 would consider the evidence.

28 BY MR. EVANS: She has also clearly said that she
29 wouldn't consider--

More Individual Voir Dire - JURY OUT

1 **BY THE COURT:** -- Y'all quit arguing amongst
2 yourselves. Let's proceed. Go on. She has already
3 answered the question.

4 **BY MR. EVANS:** Which question?

5 **BY THE COURT:** Whatever you asked her. You have
6 asked her about three times. She has got a sufficient
7 answer for us to make a decision on.

8 **BY MR. EVANS:** All right.

9 BY MR. EVANS:

10 Q. You work at Wal-Mart; is that correct?

11 A. That's correct.

12 Q. So you also work with the Defendant's father?

13 A. No. I work in Grenada Wal-Mart.

14 Q. Okay, so you don't work in this one?

15 A. (Juror shakes her head.)

16 Q. How often are you in the home of any of his
17 immediate family?

18 A. I don't visit 'em.

19 Q. How often do they visit your home?

20 A. They don't visit me.

21 Q. You and his sisters know each other pretty well?

22 A. Nope.

23 Q. You don't know his sisters?

24 A. I know them, but not well. I know his father and
25 his mother better than I know any of them.

26 Q. And how -- other than kinships, what connections do
27 you have with his father and mother?

28 A. I used to work with his mother.

29 Q. Where was that?

More Individual Voir Dire - JURY OUT

1 A. Tr-County Home Health.

2 Q. Now this is as far as the guilt or innocence phase.
3 And if I understand right -- well, if the Court says I can't
4 ask it, fine. I want to make sure I understand this one
5 question, and if the Court says I can't, then I understand.
6 Is what you are telling us that on just the guilt or
7 innocence phase before we ever get to the death penalty, that
8 you have already made up your mind of what you are going to
9 do?

10 A. Explain that. What you mean I made up my mind?

11 Q. Okay. Well, you say you already have an opinion
12 that he is innocent?

13 A. (Juror nods her head.)

14 Q. Once we have put on evidence, then the jury will go
15 out and deliberate based on the evidence of whether he is or
16 isn't guilty.

17 A. (Juror nods her head.)

18 Q. Are you telling us that you have already made up
19 your mind now that he is not guilty?

20 A. Well, again, you are skipping the part about the
21 facts. If I was on the jury, I would have the facts; right?
22 So I would be considering the facts.

23 Q. Okay, would you consider anything else when you
24 were in there?

25 A. No, just the facts.

26 Q. You wouldn't consider the fact that you are related
27 to him?

28 A. No, you consider the facts.

29 Q. But are you telling me that you would not

More Individual Voir Dire - JURY OUT

consider--

BY MR. CARTER: --And I object. I think she has answered it.

BY THE COURT: She has answered it now about three or four times. Move on.

BY MR. EVANS:

Q. If the facts showed that he was guilty, could you vote guilty?

A. Yes, if the facts showed he was guilty, I could vote guilty.

Q. All right. Now let's get to the death penalty question. This is a capital murder case. One of the two possible penalties is the death penalty. Now you have told us that you have beliefs against the death penalty. Is that correct?

A. (Juror nods her head.)

Q. I assume those are pretty strong beliefs?

A. (Juror nods her head.) Now that is strong.

Q. You just don't believe in the death penalty?

A. Nope.

Q. So if you were picked as a juror on this case and it went to the sentencing phase and the Judge instructed you that in this case the death penalty was authorized and if the facts in this case justified the death penalty, there is no way that you yourself could vote for the death penalty, is it?

A. No.

Q. And that is true whether he be related to you or not; is that right?

More Individual Voir Dire - JURY OUT

1 A. True. That's right.

2 Q. You couldn't vote for the death penalty in any
3 case?

4 A. No.

5 BY MR. EVANS: Nothing further, Your Honor.

6 BY MR. DE GRUY: No questions, Your Honor.

7 BY THE COURT: You may step down, Ms. Flowers.

8 (Juror 43, Ms. Flowers, leaves the courtroom.)

9 BY THE COURT: I'm going to excuse her for cause.

10 Any objection?

11 BY MR. EVANS: No, sir.

12 BY MR. DE GRUY: No, Your Honor.

13 BY THE COURT: Phillip Cross.

14 (JUROR NO. 44, MR. PHILLIP D. CROSS, JR., enters
15 the courtroom.)

16 INDIVIDUAL VOIR DIRE BY THE COURT:

17 Q. State your name, please.

18 A. Phillip Cross.

19 Q. Mr. Cross, have you ever heard anything about this
20 case?

21 A. Yes, sir.

22 Q. How did you get that information?

23 A. News.

24 Q. Okay, did you ever hear any community talk, street
25 talk or gossip? Just people in the community talking about
26 it?

27 A. Yes, sir.

28 Q. Okay. Did you know any of the victims?

29 A. Yes, sir.

More Individual Voir Dire - JURY OUT

1 Q. Which one?

2 A. BoBo Stewart.

3 Q. Okay, how did you know him?

4 A. He's my brother's age.

5 Q. Okay.

6 A. Just through school. I mean I have lived in Winona
7 all my life.

8 Q. Were you his friend, or was your brother his
9 friend?

10 A. We were, we were friends as we knew each other. I
11 mean we wasn't best friends.

12 Q. Didn't run around together?

13 A. No, sir.

14 Q. Did you know any of the other victims?

15 A. I knew of Ms. Carmen, Ms. Rigby.

16 Q. Okay. Have you ever had any discussions with any
17 of the victims' families, or have any of them ever discussed
18 this matter in your presence?

19 A. No, sir.

20 Q. Do you know Mr. Flowers?

21 A. I know of Mr. Flowers.

22 Q. Do you know any of his family?

23 A. Yes, sir.

24 Q. Which ones?

25 A. His sister Priscilla.

26 Q. Priscilla. How do you know her?

27 A. We were classmates.

28 Q. Okay. Have you ever had any discussions with them?

29 A. No, sir.

More Individual Voir Dire - JURY OUT

1 Q. Based on what you have heard from the media or from
2 just the community talk, street talk or gossip and taking
3 into consideration your relationships with BoBo Stewart and
4 Priscilla Flowers, have you formed an opinion as to the guilt
5 or innocence of Mr. Flowers in this matter?

6 A. No, sir.

7 Q. Mr. Cross, if you were selected as a juror in this
8 case, could you listen to the evidence that comes from the
9 witness stand, take my instructions on the law at the end of
10 the case, apply them to the facts as you see them, discuss
11 that with your fellow jurors, and make a decision based on
12 those factors rather than anything you might have heard or
13 any relationships you might have had?

14 A. Yes, sir.

15 Q. Mr. Cross, this trial could have two phases. If at
16 the first phase the jury finds beyond a reasonable doubt,
17 unanimously finds beyond a reasonable doubt that the
18 Defendant is guilty of this and returns a verdict in that
19 form, then there will be a second phase. The second phase of
20 the trial will be only for the purpose of determining
21 punishment which the jury gets the right to do in this case.
22 The two options are death and life in prison. At that stage
23 the State would put on evidence of aggravating circumstances
24 which will be evidence tending to weigh on the side of the
25 death penalty. The Defendant will put on mitigating
26 circumstances which may be a lot of different things. It is
27 verily unlimited as to what they can put on, but there will
28 be things that might not be related to the case at all like
29 what he did in high school, his work history, and his family

More Individual Voir Dire - JURY OUT

1 history, and those kind of things. And that evidence will be
2 for the purpose of weighing against the death penalty and in
3 favor of the life penalty.

4 After we have had all that evidence, then I'm going
5 to give the jury an instruction that will include those
6 factors, and it will also include the procedure of how the
7 jury is to take those factors and arrive at its verdict. Do
8 you understand that that is the way the system would work?

9 A. Yes, sir.

10 Q. Okay. At that point if I instruct you that the law
11 authorizes the imposition of the death penalty and you find
12 from the evidence that the evidence warrants it, could you
13 impose the death penalty?

14 A. Yes, sir.

15 Q. At that stage could you consider the aggravating
16 circumstances and mitigating circumstances or any other
17 evidence that comes in at that time, my instructions on the
18 law, and then consider both options life or death, or would
19 you automatically vote for the death penalty?

20 A. I would consider both.

21 Q. Okay.

22 **BY THE COURT:** Thank you, sir.

23 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

24 Q. Good morning, Mr. Cross.

25 A. Good morning.

26 Q. Mr. Cross, what we are attempting to do is to find
27 a jury that can disregard anything that they have heard about
28 this case, any outside influences, come in and sit over here
29 as a jury and base any decision that they make only on what

More Individual Voir Dire - JURY OUT

1 comes out in the courtroom. Can you tell us this morning
2 that if you were picked as a juror, you could disregard the
3 fact that you knew BoBo and that you knew the Defendant's
4 sister Priscilla, disregard anything that you have heard,
5 listen to the evidence as it comes out in the courtroom,
6 listen to the Judge's instructions, and base your decision of
7 guilt or innocence only on what you hear in the courtroom?

8 A. Yes, sir.

9 Q. Okay. That would be the first phase of the trial.
10 Now this is a capital murder case, so if the jury convicts in
11 the first phase, we go into a second phase. In that phase
12 the State will be putting on evidence, as the Judge
13 instructed you, and we will be trying to show that the death
14 penalty is appropriate. The Defense will be putting on
15 evidence trying to show that a life sentence is appropriate,
16 and what we are trying to do is find a jury that can start
17 that phase too with an open mind, not going in leaning one
18 way or the other, but going in and listen to the evidence,
19 the evidence that we put on and the evidence that the Defense
20 puts on, and weigh that evidence out as the Judge instructs
21 them to do, and then discuss the case with fellow jurors, and
22 only after doing that, decide which penalty they think is
23 appropriate at that time. Could you do that?

24 A. Yes, sir.

25 BY MR. EVANS: Nothing further, Your Honor.

26 BY MR. DE GRUY: Thank you, Your Honor.

27 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

28 Q. Mr. Cross, you are currently employed as a reserve
29 deputy with Montgomery County Sheriff's Department?

More Individual Voir Dire - JURY OUT

1 A. That's correct.

2 Q. You have a lot of friends in the Sheriff's
3 Department?

4 A. I would hope so.

5 Q. And you know that this case is investigated by the
6 Sheriff's Department?

7 A. I know that it was investigated by the Sheriff's
8 Department at that time. Now that it's under, I believe Bill
9 is the only-- or the Sheriff, excuse me, was the only one at
10 the time. You know, within the department, he was the only
11 one currently employed with the Sheriff's Department.

12 Q. Have you had discussions with your fellow deputies
13 about this case?

14 A. No, sir.

15 Q. Have you heard any discussions about the case?

16 A. No, sir.

17 Q. Be safe to say in the last ten years this is the
18 biggest case to hit Montgomery County?

19 A. I would have to say so.

20 Q. And you are telling us that you have never even
21 been around anywhere where it was discussed?

22 A. Discussed or talked about? I mean--

23 Q. Yes, talked about.

24 A. As far as discussed within the Sheriff's
25 Department, no, because as far as a discussion is concerned,
26 have you heard about it; yes, I have heard about it. But as
27 far as trying to, you know, throw guilt on Mr. Flowers or the
28 other, no. We have never been in any kind of detailed
29 conversation with that.

More Individual Voir Dire - JURY OUT

1 Q. And you understand that the position of your
2 employer is that Mr. Flowers is guilty, or they wouldn't have
3 brought the charges if they didn't think that?

4 BY MR. EVANS: Now that, I don't believe that
5 question is appropriate because his employer hasn't
6 got a position other than presenting the evidence.

7 BY THE COURT: That is true. That is not
8 correct.

9 BY MR. DE GRUY:

10 Q. In your employment there has never been any
11 discussion of how the investigation proceeded?

12 A. No, sir. To clarify my employment, sir, I have
13 never received a dollar for helping the Sheriff's Department
14 out. I am employed through the Sheriff's Department as a
15 reserve deputy. I have never received any kind of wages, any
16 kind of benefits or anything. All of my work is volunteer.

17 Q. And your brother was a classmate of BoBo Stewart?

18 A. That's correct.

19 Q. Have you had any discussions with your brother
20 about Mr. Stewart's death?

21 A. Not that I can recall, sir.

22 Q. Did you attend Mr. Stewart's funeral?

23 A. No, sir. I did not.

24 Q. How well did you know BoBo Stewart?

25 A. I knew BoBo through his older brother Dale, and--

26 Q. So you are friends with his older brother?

27 A. We were, we went to school together. Dale was, I
28 believe, a year younger than I was. He was in a class below
29 me.

More Individual Voir Dire - JURY OUT

1 Q. Do you still see him?

2 A. No, sir. I haven't seen Dale in ten, probably
3 eleven years.

4 Q. And you told us yesterday, I believe, your father
5 was also a law enforcement officer?

6 A. He used to be, sir.

7 Q. And where was he?

8 A. He was deputized with the county, and he also
9 worked at Duck Hill, Mississippi.

10 Q. And how long did he work for the county?

11 A. I can't recall, sir. I don't know. It was, I was,
12 I guess too young to keep up with it.

13 Q. Okay. Was he working for the county in 1996?

14 A. Not that I'm aware of.

15 Q. Have you had any--

16 A. -- no, sir.

17 Q. --discussions with him -- I'm sorry.

18 A. I'm sorry. No, sir. He wasn't.

19 Q. Have you had any discussions--

20 A. No, sir.

21 Q. --with him about this case? And you also told us
22 yesterday that your brother had a pending felony charge?

23 A. I don't really know. I didn't ever come to court
24 for this also. I don't know the details of it. He is
25 spending time now in a state facility in Leakesville or in
26 Leake County.

27 Q. Okay, so it is not pending. He has been convicted?

28 A. That's right.

29 Q. And which county was that out of?

More Individual Voir Dire - JURY OUT

1 A. Montgomery County.

2 Q. So he was prosecuted by Mr. Evans, Mr. Evans'
3 office?

4 A. I didn't come to court. I don't know. I guess he
5 was if he was prosecuted in the county.

6 Q. Have you had, in this talk that you have engaged in
7 either with your friends on the Sheriff's Department or
8 elsewhere, discussed the appropriate penalty in this case?

9 A. No, sir.

10 Q. The possible penalties have never come up in a
11 discussion?

12 A. I have told you before. We, I have never discussed
13 this case with anybody in the department.

14 Q. Or your brother or anybody else?

15 A. No, sir.

16 Q. So have you ever heard talk about this case or not?

17 A. Yes, but not within the department.

18 Q. Okay. So in the talk outside, has there ever been
19 talk of what the appropriate punishment should be?

20 A. No, sir.

21 Q. What was the talk about? What have you heard?

22 A. Just, you know, I work out of Winona, and people
23 from Eupora would ask me, you know, you know, what we heard
24 about the incident, the accident in Winona, and they just,
25 you know, what do you know about it? And I didn't know no
26 more than I do today.

27 Q. Which is?

28 A. What I have heard through the media or newspapers,
29 I mean over the years.

More Individual Voir Dire - JURY OUT

1 Q. Okay, so you have never heard other people talk
2 about the case. You have only been asked questions about the
3 case?

4 A. You are going to have to clarify that for me.

5 Q. Well, you are telling me now that you have heard
6 talk about it, but when I asked you what talk you heard, you
7 said people in Eupora have asked you about it.

8 A. Okay.

9 Q. Okay. Have you never heard anyone else--

10 A. Sure, I have heard it mentioned. I mean I have
11 lived here in Winona all my life. I mean I can't recall a
12 certain conversation that I, you know, sit down and I can't
13 think of anybody I have talked to about it.

14 Q. But you know for certain that no one ever expressed
15 an opinion about the appropriate punishment?

16 A. No, sir.

17 Q. No one ever expressed an opinion about who they
18 think did it?

19 A. No, sir.

20 Q. But you can't tell us what it is you did hear?

21 A. General conversations. I mean it hit national
22 news. If you lived in Winona, it was hard not to hear about
23 it.

24 Q. So the only thing you have ever heard is that four
25 people were killed?

26 A. Basically, that's it.

27 BY MR. DE GRUY: I have no more questions of this
28 witness.

29 BY THE COURT: You may-- I have one question.

More Individual Voir Dire - JURY OUT

1 Were you a reserve officer in 1996?

2 **BY THE JUROR:** Negative. No, sir.

3 **BY THE COURT:** You may step down.

4 (Juror 44, Mr. Cross, leaves the courtroom.)

5 **BY THE COURT:** What do y'all say?

6 **BY MR. EVANS:** No objection.

7 **BY MR. DE GRUY:** No objection.

8 **BY MR. EVANS:** I'm just trying to figure out how
9 to number the ones that are still on now.

10 **BY THE COURT:** Well.

11 **BY THE BAILIFF:** Judge Morgan, where do we keep
12 these?

13 **BY THE COURT:** Oh, okay. Right. I don't want
14 him to go back to that room.

15 **BY THE BAILIFF:** I knew you didn't, and I didn't
16 find that out this morning.

17 **BY THE COURT:** Have you got another room? Put
18 them in the jury room.

19 **BY THE BAILIFF:** Right here?

20 **BY THE COURT:** Yeah, just put them in the jury
21 room.

22 **BY BAILIFF MR. PINER:** We can put him in the
23 witness room.

24 **BY THE COURT:** Are there any witnesses back
25 there?

26 **BY BAILIFF MR. PINER:** Uh-uh, I don't think.

27 **BY MR. EVANS:** There were some back there, but
28 they can be moved out.

29 **BY THE COURT:** All right, move them out, and

More Individual Voir Dire - JURY OUT

1 let's put him back there. Okay, Jennifer Beckwith.

2 (JUROR NO. 45, MS. JENNIFER MARIE BECKWITH SURRELL,
3 enters the courtroom.)

4 INDIVIDUAL VOIR DIRE BY THE COURT:

5 Q. State your name, please.

6 A. Jennifer Beckwith Surrell.

7 Q. How do you spell your last name?

8 A. S U R R E L L.

9 Q. Okay. Have you ever heard anything about this
10 case?

11 A. Yes, sir.

12 Q. How did you hear about it?

13 A. Radio.

14 Q. Okay, did you ever read any newspaper, television
15 or see any television about it?

16 A. No, sir.

17 Q. Okay. Have you ever heard any community talk,
18 street talk, or gossip about it?

19 A. Yes, sir.

20 Q. Did you know any of the victims?

21 A. Yes, sir.

22 Q. Which one?

23 A. BoBo Stewart.

24 Q. Okay. Were you in school with him?

25 A. Yes, sir.

26 Q. Okay. Would you classify him as one of your
27 friends?

28 A. Yes, sir.

29 Q. Okay. Do you know his family?

More Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Did you know any of the other victims or their
3 families?

4 A. Ms. Rigby's son. That is the only one I knew.

5 Q. I believe his name is Bryan?

6 A. Yes, sir.

7 Q. Okay. Were y'all all about the same age?

8 A. BoBo was two years older than me.

9 Q. Okay. Do you know Mr. Flowers?

10 A. No, sir.

11 Q. Do you know any of his family?

12 A. No, sir.

13 Q. Have you ever had any discussions with any family
14 member of the victims concerning this matter?

15 A. No, sir.

16 Q. Has it ever been discussed in your presence by
17 them?

18 A. No, sir.

19 Q. Ms. Beckwith, have you formed an opinion as to the
20 guilt or innocence of Mr. Flowers in this case?

21 A. Yes, sir.

22 Q. Would that opinion keep you from being fair and
23 impartial?

24 A. Yes, sir.

25 Q. Thank you, ma'am.

26 BY THE COURT: Mr. Evans?

27 BY MR. EVANS: No questions.

28 BY THE COURT: Mr. de Gruy?

29 BY MR. DE GRUY: No questions.

More Individual Voir Dire - JURY OUT

1 **BY THE COURT:** You may step down.

2 (Juror 45, Ms. Beckwith Surrell, leaves the
3 courtroom.)

4 **BY THE COURT:** I'm going to excuse her for cause.
5 Any objection?

6 **BY MR. EVANS:** No, sir.

7 **BY MR. DE GRUY:** No objection.

8 **BY THE COURT:** Rosa Lynn Alford.

9 (JUROR NO. 46, MS. ROSA LYNN ALFORD, enters the
10 courtroom.)

11 INDIVIDUAL VOIR DIRE BY THE COURT:

12 Q. Would you state your name, please.

13 A. Rosa Lynn Alford.

14 Q. Ms. Alford, have you ever heard anything about this
15 case?

16 A. Yes.

17 Q. How did you get that information?

18 A. On the radio when it happened.

19 Q. Okay. Did you ever see any television coverage of
20 it?

21 A. I don't recall.

22 Q. How about newspaper? You ever read about it in the
23 newspaper?

24 A. No.

25 Q. Did you know any of the victims in this case?

26 A. Yes.

27 Q. Who?

28 A. I know all of them.

29 Q. All of them?

More Individual Voir Dire - JURY OUT

1 A. (Juror nods her head.)

2 Q. Were you friends with any of them, or did you just
3 know them because they lived in the community?

4 A. I just knew them.

5 Q. Do you know any of their families?

6 A. Yes.

7 Q. Which families? Do you know all of them?

8 A. All of them.

9 Q. Are you friends with their family?

10 A. No.

11 Q. Have you ever had any discussions with any of the
12 families about this?

13 A. No.

14 Q. Has it ever been discussed in your presence?

15 A. No.

16 Q. Have you heard community talk, street talk or
17 gossip about this matter?

18 A. Yes.

19 Q. Just from living in the community?

20 A. (Juror nods her head.)

21 Q. Do you know Mr. Flowers?

22 A. No.

23 Q. Do you know any of his family?

24 A. No, sir.

25 Q. Ms. Alford, based on what you heard and the fact
26 that you knew some people involved in this case, have you
27 formed an opinion as to the guilt or innocence of Mr.
28 Flowers?

29 A. No, sir.

More Individual Voir Dire - JURY OUT

1 Q. If you were seated as a juror, could you listen to
2 the evidence that comes into open court, take my instructions
3 on the law at the end of the case, and apply them to the
4 facts as you see them, then discuss that with your fellow
5 jurors, and reach a decision based on those things rather
6 than what you might have heard and the fact that you knew
7 some of the victims and their families?

8 A. Yes, sir.

9 Q. If this thing were -- do you know of any reason
10 that you couldn't be fair and impartial to either side?

11 A. No, sir.

12 Q. This case could have two phases. The first phase
13 would be the phase where the jury would determine whether or
14 not Mr. Flowers committed these acts, and the jury would have
15 to find that beyond a reasonable doubt, and it would have to
16 be unanimous. If they did and returned a verdict of guilty,
17 we would go to the second phase. At the second phase of the
18 trial, the State would put on evidence of aggravating
19 circumstances which would tend to warrant the death penalty.
20 At that stage the Defendant would put on mitigating factors
21 which might be numerous things that do not even relate to
22 this case. They could be about Mr. Flowers' childhood, his
23 schooling, his work history and those things. But they would
24 be for the purpose of tending to weigh in favor of life.
25 After we had heard the evidence at that part of the trial,
26 then I would give the jury an instruction that included all
27 those factors with a procedure that the jury would go through
28 in determining the verdict and in considering those factors.
29 Do you understand that that is how the system works?

More Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. There would be only two options at that stage. One
3 would be the death penalty, and one would be life in prison.
4 Do you understand that?

5 A. Yes, sir.

6 Q. If I instructed the jury that the law authorized
7 the imposition of the death penalty and you found from the
8 evidence that the evidence warranted it, could you impose the
9 death penalty?

10 A. Yes, sir.

11 Q. After considering all of those factors that I told
12 you about and my instructions on the law and hearing all the
13 evidence at that phase, could you consider both options, life
14 or death, or would you automatically vote for the death
15 penalty?

16 A. I could do life or death.

17 Q. Okay, thank you, ma'am.

18 BY THE COURT: Mr. Evans.

19 BY MR. EVANS: Thank you.

20 INDIVIDUAL VOIR DIRE BY MR. EVANS:

21 Q. Good morning.

22 A. Good morning.

23 Q. I just want to go through a few different things
24 with you. As the Court, I believe told you yesterday; I'm
25 not sure if he did or not, but at this phase in any trial
26 this Defendant or any defendant is presumed to be innocent.
27 That is because the burden of proof is on the State to prove
28 to the jury in court that he is, in fact, guilty. You
29 understand that?

More Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. And that is the way it should be because the burden
3 is on us. The defendant doesn't have to prove anything to
4 the jury. Do you have any problem with that concept of the
5 law?

6 A. No, sir.

7 Q. What we are attempting to do, we are attempting to
8 get a jury that can come in here, disregard anything that
9 they have heard, disregard anybody that they may know, and
10 base a decision strictly on the evidence that comes out in
11 the courtroom and the law that the Judge gives the jury and
12 not let any outside influences interfere one way or the
13 other. Are you telling us that you could do that?

14 A. Yes, sir.

15 Q. You wouldn't come in here leaning one way or the
16 other? You would just listen to the evidence and base your
17 decision on the evidence?

18 A. Yes, sir.

19 Q. Now that is the first phase. Real briefly, going
20 into the second phase, the Judge has told you both sides can
21 put on different evidence. We will be arguing that the death
22 penalty is appropriate. The Defense will be arguing that a
23 life sentence is appropriate, and they will be able to put on
24 a lot of factors that they decide to put on about the
25 Defendant's life. And what they are attempting to do in that
26 is show the jury that in this particular case, even though
27 the Defendant at that point would have been convicted of
28 murder, that there may be reasons for the jury to consider
29 that in this case a life sentence is appropriate.

More Individual Voir Dire - JURY OUT

1 The same as in the first phase, what we are trying
2 to do is get a jury that can come in here on that part also
3 with an open slate and say okay, nothing that I know of or
4 nobody that I know is going to influence my decision. If I
5 am picked as a juror and it gets to the second phase, I will
6 come in with an open mind. I will listen to what the State
7 puts on. I will listen to what the Defense puts on. I will
8 listen to the law that the Judge gives, and after hearing all
9 that, then I will decide which sentence is appropriate in
10 this case. Could you do that?

11 A. Yes, sir.

12 **BY MR. EVANS:** Nothing further.

13 **BY MR. DE GRUY:** Thank you, Your Honor.

14 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

15 Q. Ms. Alford, we don't have you up here just to pry
16 into your personal life. I think you understand what we are
17 trying to do is find impartial jurors for this particular
18 case. And I noticed on your questionnaire that you have a
19 son who is 17?

20 A. That's right.

21 Q. And because you knew BoBo Stewart and his family,
22 you know he was about that age at the time he was killed.

23 A. Right.

24 Q. Okay. Now knowing those facts, in a trial you may,
25 you may see pictures of Mr. Stewart having been shot, and he
26 is about the same age as your son is now. Do you think --
27 and I guess I am asking you to think about it. Would that
28 have an effect on you as you thought about the evidence in
29 this case?

More Individual Voir Dire - JURY OUT

1 A. No, it would not.

2 BY MR. EVANS: Your Honor, I object. I think
3 that is going to probably have an effect on anybody
4 that sits as a juror, so I don't think that form of
5 the question is appropriate.

6 BY THE COURT: Well, she answered it and said no.

7 BY MR. DE GRUY:

8 Q. So it wouldn't have an effect on you that you have
9 a son at home that--

10 A. No.

11 Q. --is the same age? Now you have told us that you
12 believe in the death penalty. Could you tell me what it is
13 your opinion on the death penalty is?

14 A. What my opinion is?

15 Q. Yes.

16 A. If the evidence proves that they did this and it's
17 chosen for the death penalty, then that's.

18 Q. And you understand that this, the allegation in
19 this case, it's capital murder which is killing during the
20 commission of a robbery. So the State would have to prove
21 that beyond a reasonable doubt.

22 A. (Juror nods her head.)

23 Q. And then they would have to prove an additional
24 factor, an aggravating factor to the jury beyond a reasonable
25 doubt. So my question is at that point if the State has
26 proven that to you beyond a reasonable doubt, do you think
27 that the death penalty would really be the only appropriate
28 punishment?

29 BY THE COURT: Well, of course, that is not the

More Individual Voir Dire - JURY OUT

1 scenario. I don't think it is going to be the
2 scenario because there would be other factors, and
3 that is what the question is is will she consider all
4 the factors. You are only giving her half of them.

5 **BY MR. DE GRUY:** My question is that she says she
6 can consider both, and I just want to be sure she
7 understands she couldn't even consider the death
8 penalty unless she had already found beyond a
9 reasonable doubt that it was the killing during the
10 commission of a robbery.

11 **BY MR. EVANS:** But the scenario that he is
12 giving--

13 **BY THE COURT:** --Okay, but that wasn't the way
14 you put that. You can put it that way.

15 **BY MR. DE GRUY:**

16 Q. So it's not just the killing. That is not -- you
17 wouldn't be able to consider the death penalty. The Judge
18 wouldn't authorize you to consider the death penalty, but if
19 it is the killing during the commission of a robbery that the
20 jury has found beyond a reasonable doubt, in that situation
21 would you then say, I don't need to hear or I don't want to
22 hear evidence about the Defendant's life. I think the death
23 penalty is the only appropriate punishment?

24 A. I'm still not sure what you are asking me.

25 Q. In your mind, if you have found beyond a reasonable
26 doubt a person is guilty of killing during the commission of
27 a robbery, at that point would you be able to consider other
28 factors on their life, not something to do with the crime
29 because you would have found beyond a reasonable doubt that

More Individual Voir Dire - JURY OUT

1 they were guilty of killing during the commission of a
2 robbery. So my question is would you consider these other
3 factors knowing that, or would you just say for killing
4 during a robbery, the death penalty should be the punishment?

5 A. I could consider other factors.

6 BY MR. DE GRUY: That's all I have, Your Honor.

7 BY THE COURT: Thank you, ma'am. You may step
8 down.

9 (Juror 46, Ms. Alford, leaves the courtroom.)

10 BY THE COURT: (To the Bailiff) Let me see you a
11 minute. (To Counsel) What do y'all say to her?

12 BY MR. EVANS: No objection.

13 BY MR. DE GRUY: No objection.

14 BY THE COURT: Okay. She needs to go to the
15 room, but why don't you take her around. Bobby Bell.

16 (JUROR NO. 47, MR. BOBBY WAYNE BELL, enters the
17 courtroom.)

18 BY THE COURT: Have a seat.

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. State your name, please, sir.

21 A. Bobby Wayne Bell.

22 Q. Mr. Bell, do you know anything about this case?

23 A. No, sir.

24 Q. How long have you lived in Montgomery County?

25 A. Forty-five years.

26 Q. All right. Do you recall when this happened?

27 A. Yes, sir, but I couldn't tell you the year or
28 anything like that.

29 Q. When it happened, how did you find out about it?

More Individual Voir Dire - JURY OUT

1 A. Just rumor, talk over the town.

2 Q. Community talk?

3 A. Yes, community talk.

4 Q. Street talk and gossip?

5 A. Yes, sir.

6 Q. All right. Did you see any media coverage of it?

7 A. No, sir.

8 Q. Do you know or did you know any of the victims?

9 A. Yes, sir.

10 Q. Which one?

11 A. I knew Ms. Miller and Ms. Rigby.

12 Q. Ms. Miller?

13 A. Ms. Tardy.

14 Q. Ms. Tardy?

15 A. Right.

16 Q. And Ms. Rigby, okay. How did you know them?

17 A. Through school and different activities in town,
18 things like that.

19 Q. Would you call yourself friends of theirs?

20 A. No, sir. It wasn't that type of thing.

21 Q. Do you know any of their families?

22 A. Yes, sir.

23 Q. Who do you know in the family?

24 A. I knew Ms. Tardy's daughter through school. And
25 Benji worked for me for, I don't remember whether it was a
26 year or year and a half perhaps, at a conveyor manufacturer
27 that I used to work with.

28 Q. Okay. Have you ever had any discussions with the
29 families of the victims about this matter?

More Individual Voir Dire - JURY OUT

1 A. No, sir. I have not.

2 Q. Has it ever been discussed in your presence by
3 them?

4 A. No, sir.

5 Q. How often would you say that you have even seen
6 them since this happened?

7 A. Oh.

8 Q. A lot?

9 A. No, sir. It is probably a couple of years since I
10 had seen any of the Rigbys and longer than that -- Frank
11 Ballard. I used to be in the Lions Club with him, and it has
12 been a year since I talked to him.

13 Q. Okay. Do you know Mr. Flowers?

14 A. No, sir. I can't say I do.

15 Q. Do you know any of his family?

16 A. No, sir.

17 Q. Mr. Bell, based on what you may have heard about
18 this case and the fact that you knew some of the victims and
19 you know some of the family, have you formed an opinion as to
20 the guilt or innocence of Mr. Flowers in this case?

21 A. No, sir.

22 Q. Mr. Bell, if you were seated as a juror in this
23 case, could you listen to the evidence that comes from the
24 witness stand?

25 A. Yes, sir.

26 Q. And take my instructions on the law at the end of
27 the case and apply them to the facts as you see them, then
28 discuss that with your fellow jurors, and base a decision
29 based on what you heard in court to the exclusion of anything

More Individual Voir Dire - JURY OUT

1 that you heard out of court or to the exclusion of any
2 relationships you might have had with the victims or their
3 families?

4 A. Yes, sir.

5 Q. Okay. This has a possibility of being a two phase
6 trial. The first phase would be the phase to determine
7 whether or not Mr. Flowers did these things. The jury at
8 that point would have to, in order to convict him, would have
9 to return a verdict that would have to be unanimous, and it
10 would have to be beyond a reasonable doubt. Do you
11 understand that?

12 A. Yes, sir.

13 Q. If the jury did that, then we would go to the
14 second phase which is the sentencing phase, and in that phase
15 the State would put on evidence of aggravating factors which
16 would be facts that would go toward, weighing toward the
17 death penalty or the death penalty side of the case. Of
18 course, at the sentencing phase, there are only two options -
19 the death penalty and life in prison. Do you understand
20 that?

21 A. Yes, sir.

22 Q. Okay. Also at that stage, the Defendant would put
23 on some mitigating circumstances, and those could be anything
24 just about. They would be, some of the things would not be
25 related even to this trial at all. They would be maybe how
26 he grew up, what his family life was like, maybe what his
27 work history was. I don't know what they would be, but they
28 would be in that nature. Do you understand that?

29 A. Yes, sir.

More Individual Voir Dire - JURY OUT

1 Q. After that, I would give the jury an instruction
2 that would include those factors, and it would include the
3 procedure that the jury should go through in arriving at a
4 verdict in this case. Do you understand that that is the
5 procedure that we would follow?

6 A. Yes, sir.

7 Q. That there would be aggravating circumstances,
8 mitigating circumstances, and then the jury would take those
9 and make the decision?

10 A. Yes, sir.

11 Q. You understand that? All right. If I instructed
12 the jury that the law authorized the imposition of the death
13 penalty and you found from the evidence that the evidence
14 warranted the imposition of the death penalty, could you
15 impose it?

16 A. Yes, sir.

17 Q. The reverse of that is, would be could you consider
18 the aggravating circumstances and the mitigating
19 circumstances and everything else that went on at that stage
20 of the trial and then consider both options, life or death,
21 or would you automatically vote for the death penalty?

22 A. I would automatically vote for the death penalty.

23 **BY THE COURT:** All right, sir. Mr. Evans.

24 **BY MR. EVANS:** No questions.

25 **BY MR. DE GRUY:** No questions.

26 **BY THE COURT:** Thank you, sir.

27 (Juror 47, Mr. Bell, leaves the courtroom.)

28 **BY THE COURT:** I'm going to excuse him for cause.

29 Any objection?

More Individual Voir Dire - JURY OUT

1 BY MR. EVANS: No, sir.

2 BY MR. DE GRUY: No objection.

3 BY THE COURT: Josephine Powell.

4 (JUROR NO. 48, MS. JOSEPHINE POWELL, enters the
5 courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. State your name, please.

8 A. Josephine Powell.

9 Q. Ms. Powell, now you have got to talk up where these
10 folks can hear you. Okay?

11 A. Josephine Powell.

12 Q. Ms. Powell, have you ever heard anything about this
13 case?

14 A. Yes. I heard some things.

15 Q. Okay, how did you hear about it?

16 A. Mostly, some of it on the news and some of it
17 through an individual.

18 Q. Okay, who was the individual that you heard it
19 from?

20 A. I can't, I really can't remember. Most of it was
21 like through the news. I didn't just -- when I came through,
22 I was coming, seemed like I was coming from the doctor, and
23 there were, you know, cars and things down. And so I asked
24 my neighbor what had, you know, what was going on, and she
25 didn't really know. She just said some kind of incident had
26 happened. So most of it was, you know; she said some kind of
27 incident had happened through something, but they didn't
28 know.

29 Q. Okay. Ms. Powell, since that day -- that was the

More Individual Voir Dire - JURY OUT

1 day it happened, I guess; is that right?

2 A. (Juror nods her head.)

3 Q. Since that day, have you heard some community talk
4 or street talk about this?

5 A. Very little because I'm not a person who kind of
6 talk or, you know, or let, you know, let peoples talk or say
7 things.

8 Q. Okay. Did you know any of the victims in this
9 case?

10 A. Any of the victims?

11 Q. Yes.

12 A. Oh, I knew the lady who worked at Tardy's.

13 Q. Ms. Rigby?

14 A. I don't know her name.

15 Q. Or Ms. Tardy?

16 A. Mrs. Tardy.

17 Q. Okay. Did you know BoBo Stewart?

18 A. No.

19 Q. Did you know Robert Golden?

20 A. No.

21 Q. Okay. Did you know any of these people's family?

22 A. I knew the -- at the time I knew this lady, but I
23 didn't know that it was the widow.

24 Q. The daughter?

25 A. No, the widow.

26 Q. The widow of Mr. Golden?

27 A. Right.

28 Q. Oh, okay. All right. Have you ever had an
29 opportunity to discuss this matter with anybody that was in

More Individual Voir Dire - JURY OUT

1 the victims' family, any of these victims' family?

2 A. In the victims, no.

3 Q. Okay. Have any of them ever discussed it around
4 you?

5 A. No.

6 Q. Do you know Mr. Flowers?

7 A. Yes, sir.

8 Q. And how is it that you know him?

9 A. I knew him years ago when, when he worked at -- I
10 can't think of -- seemed like it was a drug store, seemed
11 like.

12 Q. Okay. Did you know him just because you were a
13 customer of that place, or did you work there too?

14 A. No, I didn't work there.

15 Q. Okay. Do you know any of his family?

16 A. I knew his wife. I know--

17 Q. -- Who was?

18 A. --his -- beg your pardon?

19 Q. Who was that? Do you remember her name?

20 A. Lola.

21 Q. Lola?

22 A. I think it's Lola Flowers.

23 Q. Okay. Ms. Powell, based on what you have heard and
24 your relationships with some of these people, have you formed
25 an opinion as to the guilt or innocence of Mr. Flowers?

26 A. Have I formed an opinion just from?

27 Q. Just from what you have heard or the fact that you
28 know some of these folks, have you formed an opinion?

29 A. No.

More Individual Voir Dire - JURY OUT

1 Q. Ms. Powell, if you were a juror in this case, would
2 you listen to the evidence that comes from the witness stand,
3 take my instructions on the law at the end of the case, and
4 apply them to the facts as you see them, and then talk about
5 all this with your fellow jurors, and reach a decision based
6 on what you heard in here in this courtroom to the exclusion
7 of what you might have heard outside of court or to the
8 exclusion of any knowledge you might have of the victims or
9 any of the families involved? Could you base your decision
10 on what you heard in here?

11 A. What I heard in here?

12 Q. Yes, ma'am.

13 A. You are saying could I do that?

14 Q. Yes, ma'am.

15 A. Yes, sir.

16 Q. Do you know of any reason that you could not be
17 fair and impartial, Ms. Powell?

18 A. No.

19 Q. Okay.

20 A. No, sir.

21 Q. If you -- this trial could have two phases. The
22 first phase would be to determine the guilt or innocence of
23 Mr. Flowers. The second phase would be to determine the
24 penalty involved. At the first stage, the jury would have to
25 find unanimously beyond a reasonable doubt that he was guilty
26 of these incidents before they could return a verdict. If
27 they did that, then we would go to the second phase of the
28 trial. At the second phase of the trial, the jury would
29 decide the punishment, and there would be only two options.

More Individual Voir Dire - JURY OUT

1 One would be death, and one would be life in prison. At that
2 stage the State would put on facts of aggravating
3 circumstances which would be facts to weigh in favor of the
4 death penalty. The Defendant at that time would put on
5 mitigating factors which might be a lot of different things,
6 but it would not have to relate to this case. It could
7 relate to other things that happened in his life like how he
8 grew up, what kind of schooling he had, what kind of jobs he
9 had. But those things would be for the purpose of showing
10 that the life sentence should be imposed rather than the
11 death penalty. At that time I would give the jury an
12 instruction that included all those factors, and it would
13 tell the jury the procedure that they must go through in
14 order to reach a verdict.

15 If at that time, Ms. Powell, I instructed the jury
16 that the law authorized the imposition of the death penalty
17 and you found from the evidence that the evidence warranted
18 the imposition of the death penalty, could you impose the
19 death penalty?

20 A. The last, say the last part of it again. You say
21 about the wanting--

22 Q. Okay. If at the sentencing phase, after he had
23 already been found guilty, at the sentencing phase, after you
24 had heard all the evidence at that phase of the aggravating
25 circumstances or the mitigating circumstances and had my
26 instructions on the law and heard everything that was
27 presented at that phase, if I instructed the jury that the
28 law authorized them to vote for the death penalty and you
29 found from the evidence that the evidence warranted the

More Individual Voir Dire - JURY OUT

1 imposition of the death penalty, could you do that? Could
2 you vote for the death penalty?

3 A. (Pause) Oh. If you instructed me. You said if
4 you instructed--

5 Q. --No, no, ma'am. I'm not going to tell you what to
6 do.

7 A. No, I said if you said, if you instructed the jury?

8 Q. Yeah, well, let me go back first. Do you have a
9 religious belief or a personal belief against the death
10 penalty?

11 A. No.

12 Q. You do not?

13 A. No, not if they are found, no.

14 Q. All right. Then at the end of the sentencing
15 phase, what I'm going to do is when we get to that point, if
16 we get to that point, I will tell the jury that they have,
17 they have the right to impose the death penalty if they so
18 desire. It is up to the jury as to what penalty it is. It's
19 not up to me, and I'm not going to tell the jury what to do.
20 I am just going to tell them what they can do, and at that
21 point I'm going to tell them that the law will allow them to
22 impose the death penalty. But it will also allow them to
23 impose the life sentence too.

24 A. Uh-huh.

25 Q. If you find at that time that the evidence warrants
26 the death penalty and I have told you that that is a sentence
27 that you can impose, can you vote for the death penalty?

28 A. (Pause) Oh, I don't know.

29 Q. I realize it's a hard, it may be a hard question,

More Individual Voir Dire - JURY OUT

1 Ms. Powell, but you are the only one that does know. And
2 that's the reason I have to ask the question. And it's all
3 right however you feel about it. We just need to know that.

4 A. I don't think I could.

5 Q. Okay.

6 **BY THE COURT:** Thank you, ma'am.

7 **BY MR. EVANS:** May I proceed, Your Honor?

8 INDIVIDUAL VOIR DIRE BY MR. EVANS:

9 Q. How are you doing, Ms. Powell?

10 A. Okay.

11 Q. Just a few things I want to go through with you.
12 You state that you do know the Defendant Curtis Flowers?

13 A. No.

14 Q. It's his father that you know?

15 A. It's his father that I know.

16 Q. Archie Flowers?

17 A. Right.

18 Q. And his mother Lola?

19 A. Right.

20 Q. And you have known them for a pretty good while,
21 haven't you?

22 A. Yes.

23 Q. And you think a pretty good bit of both of them?

24 A. Yes. I have no, you know.

25 Q. Okay. Now you understand that this would be a two
26 phase trial. The first part would deal with strictly guilt
27 or innocence. In that part we are attempting to find a jury
28 that could disregard any outside influences, any kinships or
29 friendships or things like that. The fact that you know his

More Individual Voir Dire - JURY OUT

1 mother and daddy; I assume you respect them, think a lot of
2 them. Is that right?

3 A. Yes. I have no, you know, nothing.

4 Q. Considering those facts and considering the fact
5 that this is their son that is on trial here, wouldn't those
6 factors be on your mind when you were trying to determine
7 whether he was guilty or innocent?

8 A. No.

9 Q. That would not enter into it?

10 A. No.

11 Q. Okay, and how long have you known both of them?

12 A. I have known her longer than I have known him. I
13 have known Lola Flowers probably oh, probably, I'm going to
14 just say probably 20 years.

15 Q. Okay. And can you tell us here today that if you
16 were sitting on this jury and you found that the evidence
17 justified beyond a reasonable doubt that he was guilty and
18 you were deciding whether to vote guilty or not, that you
19 wouldn't consider the fact that you may run into his mother
20 and father later and have to explain to them why you voted
21 guilty on their son?

22 A. No.

23 Q. That would not cross your mind?

24 A. No, sir.

25 Q. Okay. When we get to the sentencing phase, I
26 assume from what you are telling us that you have pretty
27 strong beliefs against the death penalty; is that right?

28 A. Right.

29 Q. Okay, and nobody is judging those beliefs because

More Individual Voir Dire - JURY OUT

1 everybody has different beliefs. We are all entitled to our
2 own beliefs. But in this particular case this is a trial
3 that the death penalty may be one of the possible options
4 that the jury has. And that is why it is important in this
5 case that we know how you feel. Now because of those beliefs
6 against the death penalty, and I understand that what you are
7 telling us is that even if in this case the Judge told the
8 jury this is a case that the death penalty is authorized in,
9 that the jury can consider giving the death penalty, and even
10 if the facts in this case justified the death penalty, you
11 yourself couldn't vote for the death penalty, could you?

12 A. If, if they was, you know, the jury, it was
13 authorized you say and you know, the jury and everything was
14 settled and all the evidence was in, then I know, I feel
15 strongly, you know, like against it. I would, I, my personal
16 opinion would be, you know, just life, life imprisonment.

17 Q. Okay. Let me ask you this, and we will take it one
18 step at the time. Because of your beliefs, if you were
19 sitting on this jury and the jury went into the sentencing
20 phase to determine whether he should get life or death, are
21 you telling us that you would automatically vote for life
22 because you just feel like life would be the appropriate
23 sentence and not the death penalty?

24 A. I am saying that I myself would prefer, but if, you
25 know, it had been settled by the Judge and all--

26 Q. -- Well, the Judge isn't going to settle it.

27 **BY THE COURT:** Don't interrupt her now. Let her
28 finish her answer. Go ahead, Ms. Powell.

29 **BY THE JUROR:**

More Individual Voir Dire - JURY OUT

1 A. Okay, I am saying my personal opinion would be
2 life, you know, like--

3 Q. -- Right.

4 A. I don't just insist on the death penalty because my
5 personal reason is that, you know, my personal, that's my
6 personal feeling that I'm just strongly against the death
7 penalty myself.

8 Q. Right.

9 A. Whether it was somebody I knew or somebody I didn't
10 know, I still would feel the same way about the death
11 penalty.

12 Q. Yes, ma'am. I understand that. And what I'm
13 trying to get at, because of those strong beliefs against the
14 death penalty, if we were to go into the sentencing phase and
15 the jury was to decide should he get the death penalty or
16 should he get life; is what you are telling us that you would
17 have to automatically vote for life because you just don't
18 believe in giving the death penalty?

19 A. No, but if, you know, if it was -- I was thinking
20 you was meaning if it was a choice--

21 Q. -- There is a choice.

22 A. I mean if it was--

23 **BY THE COURT:** -- Now I want to hear her answers,
24 so don't interrupt her.

25 **BY THE JUROR:**

26 A. If it was a choice like, you know, if you said,
27 well, would you rather life or death, then I, my personal
28 opinion would be life. But if it just got to where, you
29 know, he was just really, like they found him really guilty

More Individual Voir Dire - JURY OUT

1 and all of this, and I know that I am, if I take the oath and
2 all that, that I really had to do what was necessary, like
3 what was ordered or everybody else, you know. I don't mean
4 the opinion but I'm saying if the, you know, the rest, the --
5 if it came down to where it was just, you know, just found
6 you know, just guilty and that it was, you all wasn't
7 offering the life, you know; you were just saying it had to
8 be the death, then I would vote.

9 Q. All right, let me make sure you understand. That
10 will never happen. It will never get to the case that the
11 Judge tells the jury that the only choice they have is the
12 death penalty. Do you understand that? The Judge doesn't
13 make that decision. I don't make that decision. The defense
14 attorney doesn't that make that decision. The jury has to
15 make that decision.

16 A. Okay.

17 Q. So the way it works, let me make sure you
18 understand the way it works. If he is convicted of capital
19 murder, we go into a second phase. In that part of the
20 trial, I will be putting on certain evidence. The evidence
21 that I will be putting on will be in an attempt to convince
22 the jury that the penalty should be the death penalty. Once
23 I do that, then the defense will put on evidence. They will
24 put on evidence probably about his life, how he grew up,
25 maybe where he went to church, things like that, in an
26 attempt to sway the jury that a life sentence is the
27 appropriate penalty. The jury is the only one that can
28 determine whether it should be death or life.

29 A. Uh-hum.

More Individual Voir Dire - JURY OUT

1 Q. You understand that?

2 A. Right. Right.

3 Q. So that choice is going to be up to the jury.

4 A. Okay.

5 Q. At that point I expect that the Judge is going to
6 tell the jury what they should consider, that they should
7 consider the aggravating factors that the State put on, that
8 they should consider or must consider the aggravating
9 factors-- the mitigating factors that the Defense puts on.
10 Then it's going to be left up to the jury. The jury will
11 deliberate to determine which sentence they should give,
12 whether it be death or life. So you will be required to
13 decide yourself, not the Judge doing it for the jury.

14 A. Okay.

15 Q. And my question is knowing that you could be a
16 juror in this case, knowing that you yourself may have to say
17 he should get life or he should get death, you yourself,
18 would you automatically lean toward giving him life
19 regardless of what came out because you don't believe in the
20 death penalty?

21 A. You are asking me would I?

22 Q. Yes, ma'am.

23 A. Yes, sir.

24 Q. Okay, and that's what-- it's a long way to get
25 there, but that's what I'm trying to find out from you.

26 A. Okay.

27 Q. And because of your opinions on the death penalty,
28 if you yourself have the option of voting for death or for
29 life, are you telling us that you yourself would not vote for

More Individual Voir Dire - JURY OUT

1 the death penalty; you would vote for life regardless of what
2 the facts were because you don't believe in the death
3 penalty?

4 A. I would vote for, I would vote for the life.

5 Q. Yes, ma'am. And that's what I'm asking.

6 BY MR. EVANS: Nothing further.

7 BY MR. DE GRUY: Just a couple of questions, Your
8 Honor.

9 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

10 Q. Ms. Powell, I think we have been through this quite
11 extensively, but I'm just really -- we are not asking you to
12 tell us, to return a verdict right now. You haven't heard
13 any evidence, and you have told us before you made a decision
14 on guilt, you would want to hear all the evidence?

15 A. Right.

16 Q. And you could do that?

17 A. Right.

18 Q. So the question is at the next phase, it's the same
19 question. Could you listen to evidence that would say why,
20 the State is trying to show why this killing is worse than
21 others, aggravating circumstances, why in this particular
22 case the death penalty they think is the appropriate
23 punishment. Could you listen to that kind of evidence?

24 A. Yes, sir.

25 Q. And of course, we don't think it is. I don't know
26 if we are ever going to get to that phase, but we would
27 present evidence to say to the jury that we think life would
28 be the appropriate punishment. And I am sure you could
29 listen to that kind of evidence?

More Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. And we all understand you have very strong feelings
3 about the death penalty, and the question really is simple.
4 Could you set those personal feelings aside and follow the
5 instructions of the Court, weigh the evidence from the State
6 and the Defense and choose between the two punishments?

7 A. Oh, yes, sir.

8 Q. And could you consider the death penalty if the
9 facts in your mind were bad enough?

10 A. If the facts in my mind were bad, could I, could I
11 consider the death penalty?

12 Q. Yes.

13 A. If it gone through everything, yes.

14 Q. In any case, not talking about this case because
15 you haven't heard any evidence. Could you consider the death
16 penalty in a case where you believed in your mind the facts
17 were bad enough to warrant the death penalty?

18 A. Yes.

19 Q. Okay, so if you were selected on any capital murder
20 jury, if the facts were bad enough, you could vote for a
21 death penalty?

22 A. Yes. I think so.

23 Q. Thank you.

24 BY MR. DE GRUY: That's all.

25 BY THE COURT: Thank you, Ms. Powell. You may
26 step down.

27 (Juror 48, Ms. Powell, leaves the courtroom.)

28 BY THE COURT: Any objection to her?

29 BY MR. EVANS: Yes, Your Honor. The State would

More Individual Voir Dire - JURY OUT

1 move for cause. She said in response to my questions
2 that she would not vote for the death penalty. She
3 would vote for life. The last thing that she said is
4 that she thought she could consider it. She wasn't
5 even asked at that point if she could vote for it if
6 the facts justified it, just that she would consider
7 it. And she said she thought she would consider it.

8 **BY MR. DE GRUY:** I think we can read back my
9 final question. It was could you impose it.

10 **BY THE COURT:** I heard it. I heard it and the
11 answer. But I didn't mean to cut you off, Mr. de
12 Gruy.

13 **BY MR. DE GRUY:** That is my -- I think Mr. Evans'
14 questions were not the proper legal standard, and I
15 think I asked her the precise, concise legal question,
16 and she said yes, if the facts warranted, if it's a
17 bad enough case, I would impose the death penalty.

18 **BY MR. EVANS:** No, she didn't. She said I think.

19 **BY THE COURT:** Well, she passed the test for
20 cause. She may have supplied plenty of fodder for a
21 peremptory challenge, but she passed the cause test,
22 and she gets to stay. Jackie Austin.

23 (JUROR NO. 49, MR. JACKIE D. AUSTIN, enters the
24 courtroom.)

25 INDIVIDUAL VOIR DIRE BY THE COURT:

26 Q. State your name, please, sir.

27 A. Jackie Austin.

28 Q. Mr. Austin, have you ever heard anything about this
29 case?

More Individual Voir Dire - JURY OUT

1 A. Other than just what has been on TV, that there has
2 been two trials and two convictions.

3 Q. Did you know any of the victims?

4 A. Yes, sir.

5 Q. Who did you know?

6 A. I knew all of them. I knew Ms. Tardy. I knew
7 Ms. Rigby. I knew BoBo, and I knew Mr. Golden just, just
8 knew him in passing.

9 Q. Did you know them pretty well?

10 A. Yes, sir.

11 Q. Did do you know the families?

12 A. Yes, sir.

13 Q. Okay. Have you ever had any discussions with any
14 of the family members about this?

15 A. No, sir.

16 Q. Has it ever been discussed in your presence?

17 A. No, sir.

18 Q. Okay, by that I mean by family members?

19 A. No.

20 Q. Do you know Mr. Flowers?

21 A. Not really, no.

22 Q. Do you know his family?

23 A. I know his father. I know him when I see him at
24 Wal-Mart checking out. I know his father just, you know, in
25 passing.

26 Q. Okay, have you ever had any discussions with any of
27 his family or anything?

28 A. No, sir.

29 Q. Mr. Austin, based on what you have heard and based

More Individual Voir Dire - JURY OUT

1 on the relationship you have had with the victims and the
2 families, have you formed an opinion as to the guilt or
3 innocence of Mr. Flowers?

4 A. No, sir.

5 Q. Even in light of the fact that you know that there
6 were two other trials and you know what the outcomes were?

7 A. No, sir.

8 Q. So you have no opinion?

9 A. No, sir.

10 Q. Okay. Is there any reason that you know that you
11 could not be fair and impartial?

12 A. No, sir.

13 Q. Mr. Austin, if you were seated as a juror in this
14 case, could you listen to the evidence that comes from the
15 witness stand, take my instructions on the law at the end of
16 the case, apply them to the facts as you see them, and reach
17 a decision based on what you heard in here and what was
18 presented to the jury to the exclusion of what you have heard
19 in the past outside of court and to the exclusion of your
20 relationships with people who are affiliated with this case?

21 A. Yes, sir.

22 Q. Mr. Austin, if this case were to go -- I mean, let
23 me rephrase. There could be two phases of this trial. The
24 first phase would be to determine the guilt or innocence of
25 Mr. Flowers. At that time the State would have to prove his
26 guilt beyond a reasonable doubt, and a jury would have to
27 unanimously find beyond a reasonable doubt that he was guilty
28 before they could return a verdict. If they did that, then
29 there would be a second phase of the trial. If they returned

More Individual Voir Dire - JURY OUT

1 a verdict of guilty, there would be a second phase of the
2 trial. At that phase the only thing that would be considered
3 would be the punishment. There are only two punishments at
4 that stage, and the jury would select those or one of those.
5 And it would either be the death penalty, or it would be life
6 in the penitentiary. The State at that point in time would
7 put on evidence of aggravating circumstances which would be
8 facts to weigh in favor of the imposition of the death
9 penalty. The Defendant at that time would put on facts of
10 mitigating, facts of mitigating circumstances which are
11 fairly unlimited and could be almost anything and do not have
12 to relate to the case. They could be about his family life,
13 how he grew up, what his educational background was, and
14 those type of things. And those things would be put on for
15 the purpose of weighing in favor of the life penalty rather
16 than the death sentence.

17 I would give the jury an instruction at that time
18 that would tell the jury which factors they could consider
19 and the procedure that they should go through in considering
20 those things and in reaching their verdict in this case. At
21 that time the jury would retire to consider one of the two
22 options that it would have.

23 First, let me ask you; do you have any religious or
24 personal beliefs in opposition to the death penalty?

25 A. No, sir.

26 Q. Okay. If at that stage of the trial I instructed
27 the jury that the law authorized the imposition of the death
28 penalty and you, in fact, found from the evidence that the
29 evidence warranted the imposition of the death penalty, could

More Individual Voir Dire - JURY OUT

1 you impose the death penalty?

2 A. Yes, sir.

3 Q. If at that stage -- well, after you had considered
4 the aggravating circumstances and the mitigating
5 circumstances and my instructions on the law and the other
6 things that are presented to you at that phase, could you
7 consider both options, the life option or the death option,
8 or would you automatically just vote for the death penalty?

9 A. I wouldn't automatically vote for the death
10 penalty.

11 Q. You would consider both options?

12 A. I would consider either option.

13 **BY THE COURT:** Thank you, sir.

14 **BY MR. EVANS:** Thank you.

15 INDIVIDUAL VOIR DIRE BY MR. EVANS:

16 Q. Good morning, Mr. Austin.

17 A. Good morning.

18 Q. Ms. Austin, basically what we are attempting to do,
19 we know that probably every prospective juror has heard
20 something about the case. So what we are attempting to do is
21 arrive at a jury that can disregard anything that they have
22 heard, come into the courtroom with an open mind, not let any
23 outside influences enter into their decision, sit over here
24 as a juror, listen to the evidence that comes out in the
25 courtroom and the law that the Judge gives, and base the
26 decision of guilt or innocence strictly on what comes out in
27 the courtroom. Can you do that?

28 A. Yes, sir.

29 Q. Okay. That would be the first phase of the trial.

More Individual Voir Dire - JURY OUT

1 Now as the Judge has told you, in this case there could be
2 two penalties. If the jury-- I mean, yeah, two penalties,
3 but to get to that, the jury would have to convict in the
4 first phase. If the jury convicts and we go into the second
5 phase, again we are trying to find a jury that can come into
6 that phase with an open mind, that can listen to what the
7 State puts on and listen to what the Defense puts on. We
8 will be arguing things, aggravating factors, and we will be
9 attempting to show the jury that the death penalty is
10 appropriate. The Defense is going to be attempting to show
11 that a life sentence is appropriate, and right now we don't
12 even know what all factors may come in. But the Judge, I
13 expect to tell the jury how to consider those factors. The
14 Judge will tell the jury what to consider, and then the jury
15 is to sit down, discuss those matters with each other, listen
16 to what the State had put on, what the Defense had put on,
17 and only at that point decide which sentence is appropriate.
18 Could you do that?

19 A. Yes, sir.

20 Q. You wouldn't be leaning toward the death penalty.
21 You wouldn't be leaning toward a life sentence. You would
22 just base it on what comes out in court, listen to both
23 sides, and decide at that point which sentence you thought
24 was appropriate?

25 A. Yes, sir.

26 BY MR. EVANS: Nothing further, Your Honor.

27 BY MR. DE GRUY: Thank you, Your Honor.

28 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

29 Q. Mr. Austin, you said you were friends with all of

More Individual Voir Dire - JURY OUT

1 the victims, or you knew all the victims?

2 A. I knew them all and was friends with most of them.

3 Q. Okay.

4 A. Or I have been in, you know, come in contact with
5 them a lot.

6 Q. Could you tell me about how -- start with Ms.
7 Tardy. How often would you come in contact with her?

8 A. Well, I own a business here, a car dealership here,
9 and I have sold her vehicles and have done repair work on the
10 vehicles that she has had and have bought furniture there.
11 And I don't know that I would run into her every month, but
12 every couple of months, you know, we would cross paths.

13 Q. Was it only a business relationship, or did y'all
14 have a personal -- were y'all friends as well?

15 A. I would say we were friends. We didn't visit in
16 each other houses or anything like that, but yes, sir; I
17 considered her a friend.

18 Q. And what about the rest of, the other members of
19 her family?

20 A. Okay. I have also had business relations with her
21 son-in-law and her daughter. They have bought vehicles at my
22 place and done repair work there.

23 Q. That would be the Ballards?

24 A. Yes, sir. The Ballards, Roxanne and Frank. And
25 they rented a house from me from '94 until I think the end of
26 the '99, about five years. When they moved back here from
27 Memphis, they rented a house from me. And I would consider
28 us friends. We didn't go out and eat together and visit and
29 stuff like that, but I consider them friends; yes, sir.

More Individual Voir Dire - JURY OUT

1 Q. So at the time of Ms. Tardy's death her daughter
2 and son-in-law were renting a house from you?

3 A. Yes, sir.

4 Q. And continued to rent for some time after that?

5 A. I think it was the end of '99 or end of 2000; I'm
6 not sure about that. But I know they started at the end of
7 '94.

8 Q. Did you attend Ms. Tardy's funeral?

9 A. No, sir.

10 Q. Did you have, ever have any discussions with the
11 Ballards about her death?

12 A. No, sir.

13 Q. How often do you see the Ballards now?

14 A. Whenever they have some kind of vehicle problem;
15 maybe every couple of months or so, you know, just when they
16 come there. I don't go to visit. I have bought furniture at
17 their store, but two or three, three or four times a year,
18 you know; something like that, I guess.

19 Q. And Ms. Rigby, how often would you have seen her,
20 or what was the nature of that relationship?

21 A. Okay, I have also sold her and her husband vehicles
22 and him vehicles since then, done repair work for them. Her
23 husband and I was in the National Guard together from '70
24 to -- for six years, '76. And then I just see him on the
25 street or when he comes through the dealership. We don't,
26 you know, we don't attend any functions together. We don't
27 go out and eat together or anything like that, just business
28 type stuff.

29 Q. And BoBo Stewart?

More Individual Voir Dire - JURY OUT

1 A. I just knew him. I have a son that is one year
2 younger than him, and I knew him through T-ball, peewee
3 football, that type stuff, you know, when we are out there
4 teams competing, that type stuff. I didn't, I wasn't his
5 coach or anything like that. From time to time I guess you
6 could say I was a helper with the younger ones until they got
7 kind of grown up, but that is the only relationship I had
8 with him.

9 Q. So you weren't his coach, but you might have worked
10 with him?

11 A. Yeah. I guess you would say I was an assistant
12 coach or a helper coach, but I didn't, I wasn't the main
13 coach or anything like that. But I think we have been on
14 peewee football together and probably some minor league
15 baseball together, when their age is around probably eight to
16 ten years old, eleven years old.

17 Q. He ever visit your son at your house?

18 A. No, sir.

19 Q. And I believe you said you also knew Mr. Golden?

20 A. Well, he has been through my business a time or
21 two, but not very often. I didn't, I just knew his name and
22 just knew him when I saw him. But I know one of his
23 brothers.

24 Q. Do you still see his brother?

25 A. Once or twice a year he may come through my
26 business for like an inspection sticker or ask me a question
27 about a vehicle or something like that, you know, but I don't
28 just see him on a routine basis.

29 Q. Now back to BoBo Stewart's family; do you see any

More Individual Voir Dire - JURY OUT

1 of his other family members?

2 A. No, sir.

3 Q. You never had business relationships with the
4 Stewarts?

5 A. I don't remember any business relationships with
6 the Stewarts. I don't remember anything.

7 Q. Now the vehicles that you were selling to Ms. Tardy
8 and to the Ballards, are those both personal vehicles and
9 vehicles used in the business?

10 A. Yes, sir. I have done both.

11 Q. Now you understand that what this whole process is
12 about is trying to find fair and impartial jurors, and nobody
13 is suggesting that you are not a fair person when we are
14 saying we are looking for a fair and impartial juror based on
15 the particular facts of this case. And so I would ask you,
16 you have an ongoing business relationship with the Ballards,
17 and you have been their landlord for an extended period of
18 time including the time in which this occurred. Do you
19 believe that you can, that you would be an, considered
20 objectively an impartial person?

21 A. Well, I know them all personally, and I think, you
22 know, I don't know if it would bother you, but you would
23 think about it when you run up to them later either way you
24 went. But as far as considering the evidence, yes, sir. I
25 would take it seriously and do what, based on the evidence
26 here.

27 Q. Well, no doubt that you would take it seriously,
28 but that is exactly the point, and I think you can appreciate
29 why I have concerns.

More Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. After you have heard the evidence and you are
3 deliberating on the case, the fact that whatever decision you
4 make you may not only have to, you are having to face people
5 you know socially, but -- and around town, but you have got
6 an ongoing business relationship?

7 A. Yes, sir.

8 Q. May never sell another vehicle?

9 A. Yes, sir. I understand that.

10 Q. And you are telling us that that is something that
11 wouldn't enter into your mind when you are trying to decide
12 the case?

13 A. Not, not on something this serious; no, sir.

14 Q. That you wouldn't even think about that?

15 A. Would I think about it?

16 Q. Would you be thinking about it?

17 A. It would have to be on my mind that, when I just --
18 not the business part, more so the friend part when I would
19 see them would bother me more than any business relationship
20 at all as far as they are concerned.

21 Q. And you are telling us you would not make a
22 decision based on this personal relationship; you would make
23 it solely on the evidence?

24 A. Yes, sir.

25 Q. And not be thinking about the next time you face
26 them?

27 A. No.

28 Q. So then again to my question about objective
29 impartially, do you believe--

More Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** --Your Honor, I think we have
2 covered this.

3 **BY MR. DE GRUY:**

4 Q. Do you believe that--

5 **BY THE COURT:** -- He has answered your question,
6 Mr. de Gruy. You have asked it two or three times.
7 You can ask some new stuff, but that question has been
8 answered.

9 **BY MR. DE GRUY:**

10 Q. And you have told us you are a supporter; you are
11 in favor of the death penalty in general?

12 A. Yes, sir. In general, yes, sir.

13 Q. Could you tell us exactly what those beliefs are?

14 A. I don't really know how to tell you what my beliefs
15 are other than uh -- I don't really know how to tell you
16 that.

17 Q. Do you have religious beliefs about the death
18 penalty?

19 A. No, uh-uh. I mean--

20 Q. This is your opinion in favor of the death penalty.
21 How would you say, that you are moderately in favor of the
22 death penalty, strongly in favor of the death penalty?

23 A. I would have to say moderately. I'm not strongly,
24 I don't just believe every person that has committed some
25 type crime, I mean a serious crime, a capital crime should
26 get the death penalty, no. I just think probably that
27 certain crimes, and I don't know; I couldn't specify certain
28 crimes, but I think certain crimes would warrant the death
29 penalty and certain evidence, where there is absolutely no

More Individual Voir Dire - JURY OUT

1 doubt.

2 Q. And so the killing during the commission of a
3 robbery, that is what capital murder is. So if you have no
4 doubt; it has been proven to you beyond a reasonable doubt;
5 are you saying that killing during the commission of a
6 robbery would warrant the death penalty?

7 BY MR. EVANS: That is not the appropriate
8 question.

9 BY THE COURT: And of course, that's--

10 BY MR. DE GRUY: -- I am trying to get
11 information from him on his feelings--

12 BY THE COURT: -- I understand, but the law would
13 authorize it in that situation.

14 BY MR. DE GRUY:

15 Q. I understand. And you wouldn't even be able to
16 consider the death penalty for any case other than capital
17 murder in the State of Mississippi. Do you understand that?

18 A. Well, I didn't know that.

19 Q. Okay. So the only time that the Judge would even
20 authorize you to consider the death penalty would be for the
21 killing during the commission of another offense such as
22 robbery. So just a killing, an intentional killing, the
23 Judge wouldn't even authorize you to consider the death
24 penalty. Do you understand that?

25 A. I understand that.

26 Q. Okay. So my question is if -- you're understanding
27 that capital murder is the killing during the commission of a
28 robbery, and it would have to be proven to you as a juror
29 beyond a reasonable doubt. So my question is if you have

More Individual Voir Dire - JURY OUT

1 found someone guilty beyond a reasonable doubt of killing
2 during the commission of a robbery, would you then say the
3 only appropriate punishment is the death penalty?

4 **BY MR. EVANS:** Your Honor, that is not an
5 appropriate question because --

6 **BY MR. DE GRUY:** --it is absolutely--

7 **BY MR. EVANS:** --it is leaving out the fact that
8 he would have other things to consider.

9 **BY MR. DE GRUY:** We are trying to find out
10 whether or not, what his feelings are on the death
11 penalty and whether or not he would consider other
12 things or whether he believes that it would be the
13 only appropriate punishment.

14 **BY THE COURT:** Right, and I asked him that
15 question, and he answered it. So you have to put it
16 in the correct context, and if you do that, then you
17 can ask that question.

18 **BY MR. DE GRUY:** Your Honor, I think he clearly
19 didn't understand what capital murder was at the time.

20 **BY THE COURT:** Well, I think he understood my
21 description of the process at the sentencing phase and
22 that there would be two options, and at that time he
23 said he would consider both options. And he said
24 specifically that he would not automatically impose
25 the death penalty. He said that.

26 **BY MR. DE GRUY:** I don't believe he has been
27 allowed to answer whether or not killing during the
28 commission of a robbery, he would then consider, would
29 he still be willing to consider mitigating factors.

More Individual Voir Dire - JURY OUT

1 **BY THE COURT:** And the reason he hasn't been
2 because you haven't asked it that way.

3 **BY MR. DE GRUY:** Okay.

4 **BY THE COURT:** If you will ask it that way, I
5 will let him answer it.

6 **BY MR. DE GRUY:**

7 Q. If you had found someone guilty beyond a reasonable
8 doubt of killing during the commission of a robbery, would
9 you be able to consider any punishment? Would you be able to
10 consider any evidence about the person's life, or would you
11 simply say this case warrants the death penalty?

12 A. I wouldn't say this case simply warrants the death
13 penalty; no, sir. I think you have to look at everything. I
14 guess you are asking me if I would just automatically be that
15 way. No, sir.

16 Q. And I believe you told us yesterday that you had a
17 stepson who was convicted of a crime?

18 A. Yes, sir.

19 Q. Was that in Montgomery County?

20 A. No, sir. It was in Tupelo.

21 Q. Okay. So it had nothing to do with Mr. Evans'
22 office?

23 A. No, sir.

24 **BY MR. DE GRUY:** That's all I have, Your Honor.

25 **BY THE COURT:** Thank you, Mr. Austin. You may
26 step down.

27 (Juror 49, Mr. Austin leaves the courtroom.)

28 **BY THE COURT:** Any objection to him for cause?

29 **BY MR. EVANS:** No, sir.

More Individual Voir Dire - JURY OUT

1 BY MR. DE GRUY: No, Your Honor.

2 BY THE COURT: Okay, he may go to the room.

3 Sherry Richardson.

4 (JUROR NO. 50, MS. SHERRY ANN H. RICHARDSON, enters
5 the courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. Have a seat. Ms. Richardson, state your full name
8 for the record.

9 A. Sherry Ann Henley Richardson.

10 Q. Ms. Richardson, have you ever heard anything about
11 this case?

12 A. All I have ever heard is I knew there was something
13 happened. I knew there was, found some people dead. That's
14 all I know about it.

15 Q. Did you see that in the newspaper?

16 A. No, sir. I just heard it through people talking.

17 Q. Community talk?

18 A. Yes, sir.

19 Q. Did you ever hear any media coverage of this at
20 all?

21 A. I'm sure it was, but I never read it or watched it.
22 I don't watch news, or I don't listen to the news on the
23 radio.

24 Q. Ms. Richardson, have you heard anything since it
25 happened? Well, I mean obviously some of that would be
26 since. I'm talking about in the recent past, have you heard
27 anything?

28 A. Not really. I knew they had a trial once, but I
29 didn't know, I don't know anything about it.

More Individual Voir Dire - JURY OUT

1 Q. Okay. Did you know what the outcome of that was?

2 A. No, sir. I do not.

3 Q. Ms. Richardson, where in the county do you live?

4 A. Poplar Springs community.

5 Q. Okay. Did you know any of the victims in this
6 case?

7 A. No, sir.

8 Q. Do you know Mr. Flowers?

9 A. No, sir.

10 Q. Do you know any of his family?

11 A. If I do, I don't know it.

12 Q. Ms. Richardson, based on what you have heard in the
13 past, have you formed an opinion as to the guilt or innocence
14 of Mr. Flowers?

15 A. No, sir.

16 Q. Ms. Richardson, if you were a juror in this case,
17 could you listen to the evidence that comes from the witness
18 stand and the law that I give you at the end of the case and
19 apply that law to the facts as you see them, then discuss
20 that with your fellow jurors, and reach a verdict based on
21 what you heard there at the exclusion of anything else you
22 might have heard?

23 A. Yes, sir. I think I could.

24 Q. Okay. Do you know of any reason that you could not
25 be fair and impartial?

26 A. No, sir.

27 Q. Okay. Ms. Richardson, do you have any religious or
28 personal beliefs in opposition to the death penalty?

29 A. No, sir.

More Individual Voir Dire - JURY OUT

1 Q. If this case, this case could have two phases. The
2 first phase, the jury would be required to reach a verdict as
3 to the guilt or innocence of Mr. Flowers. If they found him
4 guilty, they must do so unanimously and beyond a reasonable
5 doubt. Do you understand that?

6 A. Yes, sir.

7 Q. Okay. If that occurs, then we go to the second
8 phase where the jury would impose the penalty. The only
9 options are death or life in prison. Do you understand that?

10 A. Yes, sir.

11 Q. At that stage there would be additional evidence.
12 The State would put on the evidence of aggravating
13 circumstances, and those, that evidence would tend to weigh
14 in favor of the death penalty. After that, then the
15 Defendant would put on evidence of mitigating factors which
16 might not even relate to this case. They might be how he
17 grew up, what his home life was, what kind of jobs he had.
18 It would just be anything that has happened to him in his
19 life that would tend to mitigate this matter and tend to
20 weigh toward the imposition of life rather than death. Do
21 you understand that that would be the process?

22 A. Yes, sir.

23 Q. Okay. After that evidence was put on, then I would
24 give the jury an instruction that would include all those
25 factors, and it would tell the jury what they could consider
26 and the procedure that they must go through to reach a
27 verdict as to the penalty in this case. And it would tell
28 you you have to weigh both of those, all of those factors in
29 there. If I instructed the jury at that point that the law

More Individual Voir Dire - JURY OUT

1 authorized the imposition of the death penalty and you found
2 at that time that the evidence warranted the imposition of
3 the death penalty, could you impose it?

4 A. Yes, sir.

5 Q. All right, if at that phase, at that time if you --
6 at that time you would have found him guilty beyond a
7 reasonable doubt. After considering then the aggravating
8 circumstances and the mitigating circumstances, could you
9 also consider the life option and impose that if you found
10 that the evidence warranted that?

11 A. I think I could, yes, sir.

12 Q. Would you -- what I'm asking you, Ms. Richardson,
13 of course, is would you consider all the factors, weigh all
14 the options, and then make up your mind as to both and not
15 automatically vote for the death penalty?

16 A. Yes, sir.

17 **BY THE COURT:** Okay. Mr. Evans.

18 **BY MR. EVANS:** Thank you, Your Honor.

19 INDIVIDUAL VOIR DIRE BY MR. EVANS:

20 Q. Good morning.

21 A. Good morning.

22 Q. Just briefly, kind of going through a little of
23 this, what we are attempting to do is get a jury that can
24 disregard anything that they may have heard about the case
25 because I think everybody has heard something about it. So
26 we are trying to find a jury that will be fair and impartial
27 to both sides, will come into the courtroom with a clean
28 slate and open mind, say okay, I'm going to set anything I
29 may have heard aside; I'm ready to hear the evidence, and

More Individual Voir Dire - JURY OUT

1 then listen to the evidence that comes out in the courtroom;
2 listen to the law that the Judge gives the jury; and base the
3 decision of guilt or innocence on just what comes out in the
4 courtroom and what law the Judge gives. Can you do that?

5 A. Yes, sir.

6 Q. Okay. Going step by step through it as the Judge
7 has gone into, a capital murder case can be a two phase
8 trial. If the jury has found that the Defendant is guilty of
9 capital murder, which is what he is charged with, he is
10 charged with killing four people during the commission of a
11 robbery. If the jury finds that he is guilty of that, then
12 we go into a second phase. In that phase both sides can put
13 on evidence. The State will be putting on evidence to try to
14 show the jury that the death penalty is the appropriate
15 penalty.

16 Then the Defense will be putting on evidence. They
17 will be putting on evidence in mitigation or to try to make
18 even though he has been convicted of the death penalty, to
19 show the jury that in this particular case the death penalty
20 isn't appropriate; a life sentence is. And the Judge will
21 tell the jury what they can consider in those facts, but the
22 Defense will be putting on things that aren't related to the
23 crime but are related to the Defendant, things like his
24 childhood, things like that, anything to try to show the jury
25 that that should be the appropriate penalty. You understand
26 that procedure?

27 A. Yes.

28 Q. And what we are trying to do in that phase is have
29 a jury that can sit over here, can disregard everything that

More Individual Voir Dire - JURY OUT

1 they have heard, and at that point not disregard the fact
2 that he has been convicted, but that not at that point make
3 them make a decision; come into the second phase again with
4 an open mind; say okay, I'm going to listen to the evidence.
5 I'm going to listen to what the State argues. I'm going to
6 listen to what the Defense argues. I'm going to listen to
7 the law that the Judge gives, and only after hearing all of
8 that will I consult with other jurors and decide which
9 penalty in this particular case is appropriate, whether he
10 should get life or whether he should get death. Can you do
11 that?

12 A. Yes, sir.

13 Q. And in doing that, can you tell us that you
14 wouldn't go into that phase leaning one way or the other.
15 You wouldn't go in leaning that he should automatically get
16 life or that he should automatically get the death penalty,
17 but you would only make that decision after you have heard
18 the evidence from both sides; you would consider what both
19 sides puts on; and then after you have considered what both
20 sides puts on and the law, then you would make up your mind?

21 A. Yes, sir. After I heard what the Judge said to do,
22 his instructions.

23 **BY MR. EVANS:** Nothing further.

24 **INDIVIDUAL VOIR DIRE BY MR. DE GRUY:**

25 Q. Ms. Richardson, I believe you told us yesterday you
26 were Sheriff Tompkins' cousin?

27 A. Second cousin, yes, sir.

28 Q. Second cousin. And you know he was the Sheriff
29 back in '96?

More Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. How close are y'all?

3 A. Well, he is dead now.

4 Q. How often back then would y'all--

5 A. Not very often at all. I was going through a
6 divorce, and I didn't, I didn't communicate really with very
7 many people at all. That's one reason I didn't know anything
8 that was going on.

9 Q. And I believe you said your ex-husband had been
10 prosecuted?

11 A. Yes, sir.

12 Q. Was he prosecuted by Mr. Evans' office or?

13 A. I really don't know. I'm not for sure. I don't
14 even know what he was prosecuted for to tell you the truth.

15 Q. Back to your cousin Sheriff Tompkins; were y'all,
16 as second cousins, were y'all close? Did you visit with each
17 other?

18 A. We was real close when we was growing up because we
19 lived next door, but after that -- see, I have been gone away
20 from here. I just moved back in '93 to Montgomery County.

21 Q. And so in your adult life--

22 A. No.

23 Q. You were not close?

24 A. No.

25 Q. Now on your questionnaire, it is asking about your
26 employment. Your prior employment was at KI?

27 A. Uh-hum.

28 Q. How long did you work there?

29 A. Not but about a month or two months, and then I got

More Individual Voir Dire - JURY OUT

1 my job at Kilmichael working for the doctor's office.

2 Q. And on the question of -- never mind. Now I am
3 reading it. You answered it. It is getting late for all of
4 us. You had mentioned that you had heard of an earlier
5 trial?

6 A. (Juror nods her head.)

7 Q. Where did you hear that?

8 A. Probably at work. I really, like I say, I wasn't
9 interested in it. I knew nobody in it, and I am just kind of
10 one of them people that if I don't know somebody or
11 circumstances around it, I'm just not interested.

12 Q. So you think you heard about it in gossip?

13 A. Yes, sir.

14 Q. And what you heard, did you form any opinions?

15 A. Like I say, I don't even know where the trial was.
16 I don't even know what the verdict was. I just heard that
17 there was a trial or going to be a trial or something, but I
18 have no idea.

19 BY MR. DE GRUY: That's all I have, Your Honor.

20 BY THE COURT: You may step down, Ms. Richardson.

21 (Juror 50, Ms. Richardson leaves the courtroom.)

22 BY THE COURT: Any objection to her?

23 BY MR. EVANS: No, sir.

24 BY MR. DE GRUY: No, Your Honor.

25 BY THE COURT: She can go to the room. Barbara
26 Williamson.

27 (JUROR NO. 51, MS. BARBARA WILLIAMSON, enters the
28 courtroom.)

29 INDIVIDUAL VOIR DIRE BY THE COURT:

More Individual Voir Dire - JURY OUT

1 Q. State your name.

2 A. Barbara Williamson.

3 Q. Ms. Williamson, have you ever heard anything about
4 this case?

5 A. Yes, sir.

6 Q. How did you get that information?

7 A. Through radio, TV -- you mean now, this case or
8 previous ones?

9 Q. Previous.

10 A. Okay. And friends and family.

11 Q. Okay. Where do you live in the county?

12 A. I live behind the hospital.

13 Q. In Winona?

14 A. Uh-huh.

15 Q. Okay. You were living here, I guess, when this
16 happened; is that correct?

17 A. Yes, sir, but I wasn't -- I was on a trip at the
18 time.

19 Q. Okay. Is what you-- did you, have you read or
20 heard any media coverage of this?

21 A. Some. Yes.

22 Q. The stuff that you heard, was it community talk,
23 street talk or gossip?

24 A. With the family and friends, yes.

25 Q. Okay, which family?

26 A. It would be my husband's family.

27 Q. Oh, your family. It would be your family, that it
28 has been discussed in your family; is that right?

29 A. Right.

More Individual Voir Dire - JURY OUT

1 Q. And with your friends?

2 A. (Juror nods her head.)

3 Q. You have got to answer so she can hear you.

4 A. Oh, yes.

5 Q. Did you know any of the victims in this case?

6 A. No, sir.

7 Q. Do you know any of their families?

8 A. Not that I'm aware of. Uh-uh.

9 Q. Do you know Mr. Flowers?

10 A. No, sir.

11 Q. Do you know any of his family?

12 A. I don't know. I could but, because I'm a school
13 teacher so, and I work with children, but I would say no.

14 Q. Okay. Ms. Williamson, based on what you have heard
15 and what you and your family discussed and everything, have
16 you formed an opinion about this case as to the guilt or
17 innocence of Mr. Flowers?

18 A. Yes, sir.

19 Q. Would that opinion keep you from being a fair and
20 impartial juror?

21 A. Yes, sir.

22 Q. Thank you, ma'am.

23 BY THE COURT: Mr. Evans?

24 BY MR. EVANS: No questions.

25 BY THE COURT: Mr. de Gruy?

26 BY MR. DE GRUY: No questions.

27 BY THE COURT: You may step down, Ms. Williamson.

28 (Juror 51, Ms. Williamson leaves the courtroom and
29 was struck for cause though nothing was verbal on the

More Individual Voir Dire - JURY OUT
record.)

BY THE COURT: Ms. Young.

(JUROR NO. 52, MS. IRESHA K. WITTY YOUNG, enters
the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please.

A. Iresha Witty Young.

Q. Ms. Young, do you know anything about this case?

A. No, sir.

Q. Have you ever heard of it?

A. Read it in the paper, but that's about all.

Q. Okay. Where were you living at the time that this
occurred in '96?

A. I had just moved from Pennsylvania.

Q. Okay. Are you originally from Pennsylvania?

A. No. Originally from here.

Q. From here, okay. How long had you been gone?

A. About two years, about two years.

Q. Okay. So you remember though when it occurred; is
that right?

A. I mean I heard like a little bit of it but not
much.

Q. Have you ever heard any media coverage of it,
newspaper or radio or television?

A. No. I work nights.

Q. At any time?

A. Very little.

Q. Okay. Have you heard it discussed in the community
or any street talk or gossip about it?

More Individual Voir Dire - JURY OUT

1 A. Not really, uh-uh.

2 Q. Did you know any of the victims in this matter?

3 A. No.

4 Q. Did you know, do you know any of their families?

5 A. No.

6 Q. Do you know Mr. Flowers?

7 A. No.

8 Q. Do you know any of his family?

9 A. No.

10 Q. All right. Ms. Young, based on what you have heard
11 about this case, have you formed any opinion as to the guilt
12 or innocence of Mr. Flowers?

13 A. No.

14 Q. Ms. Young, if you were seated as a juror in this
15 case, could you listen to the evidence that comes from the
16 witness stand, take my instructions on the law at the end of
17 the trial, and talk to your other jurors or consult with
18 them, and then reach a verdict based on what has happened
19 here in court and what you have heard in court to the
20 exclusion of anything else you might have had?

21 A. Yes.

22 Q. Do you know of any reason that you could not be
23 fair and impartial?

24 A. No.

25 Q. Ms. Young, this is a capital case, and in this case
26 the death penalty could be an option. It could only be an
27 option if the jury at the first phase of the trial finds
28 beyond a reasonable doubt, unanimously finds beyond a
29 reasonable doubt that Mr. Flowers is guilty of this. Do you

More Individual Voir Dire - JURY OUT

1 understand that?

2 A. Yes.

3 Q. Okay. If the jury does that, then we go to the
4 second phase, and in the second phase the jury will determine
5 the penalty in this case. And the only two options are going
6 to be the death penalty or life in prison. At that stage the
7 State will put on evidence of aggravating circumstances, and
8 that evidence will tend to warrant the death penalty. The
9 Defendant will put on mitigating circumstances, and that
10 could be any circumstances of the Defendant's life. It does
11 not have to relate to this case at all. It could be how he
12 was brought up, what kind of schooling he had, his personal
13 life and those type of things. But that evidence, the
14 purpose of that evidence would be to lean toward the life
15 option. Do you understand that?

16 A. Yes.

17 Q. Okay, at that stage I would also instruct the jury
18 as to which circumstances they could consider, which
19 aggravating and mitigating circumstances they could consider,
20 and I would instruct them as to the procedure that they
21 should go about in reaching a verdict in considering those
22 circumstances. Do you understand that?

23 A. Yes.

24 Q. If at that stage I instructed the jury that the law
25 authorized the imposition of the death penalty and you found
26 from the evidence that the evidence warranted the imposition
27 of the death penalty, could you impose it?

28 A. Yes and no.

29 Q. Okay, well, I have got to have one or the other.

More Individual Voir Dire - JURY OUT

1 You can explain that answer, but I'm probably going to in the
2 long run have to have one or the other.

3 A. I guess yes.

4 Q. You could do it?

5 A. (Juror nods her head.)

6 Q. Okay. Let me ask you this then. If at that stage
7 after hearing all of the evidence, which would include those
8 aggravating circumstances and mitigating circumstances, could
9 you consider both options, life or death, or would you
10 automatically impose the death penalty?

11 A. Both options.

12 Q. You could consider both options?

13 A. Yes.

14 Q. Okay, thank you.

15 **BY THE COURT:** Mr. Evans.

16 **BY MR. EVANS:** Thank you, Your Honor.

17 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

18 Q. Good morning, Ms. Young.

19 A. Good morning.

20 **BY MR. CARTER:** Your Honor, just for the record,
21 I object ahead of time if he is going to ask the same
22 questions that you have already asked.

23 **BY THE COURT:** Okay, well, I don't know of any
24 objection ahead of time. So go ahead.

25 **BY MR. EVANS:** Thank you, Your Honor.

26 **BY MR. EVANS:**

27 Q. Good morning, Ms. Young.

28 A. Good morning.

29 Q. Ms. Young, I noticed from your questionnaire that

More Individual Voir Dire - JURY OUT

1 you were a CNA; is that correct?

2 A. Yes.

3 Q. So you work in the medical field?

4 A. Yes.

5 Q. Ms. Young, you have said as far as you know, you
6 don't know the Defendant; is that right?

7 A. No.

8 Q. Now his mother is Lola Flowers, and she also works
9 in the medical field. Do you know her?

10 A. No, I work in Kilmichael.

11 Q. Now his father is Archie Flowers that I think works
12 at Wal-Mart here in town. Do you know him?

13 A. No. Seen him, you know, by going in there, but not
14 actually personally knowing him, no.

15 Q. Okay, so you do know who his father is?

16 A. No, I just found out who he has. I didn't know he
17 was his father.

18 Q. How did you just find out who he was?

19 A. By us being here.

20 Q. Okay. So the person that you see here at court
21 with him, you know from Wal-Mart?

22 A. Yes.

23 Q. And you know that is his father?

24 A. Yes, just found that out.

25 Q. Okay, and again I want to ask you, how did you just
26 find that out?

27 A. By us being here.

28 Q. Well, what happened by you being here that you
29 would know that it's his father?

More Individual Voir Dire - JURY OUT

1 A. Because someone here told me that was his father.
2 I did not know that.

3 Q. Who told you that?

4 A. Uh, who was that that told me? I can't recall the
5 person, but it was someone here.

6 Q. Somebody here pointed out to you that that was his
7 father?

8 A. Uh-hum.

9 Q. Was that another juror?

10 A. No. Uh-uh.

11 Q. But you don't know who it was?

12 A. Not personally, no.

13 Q. What did they say about him?

14 A. Just said the person's name and that that was his
15 father.

16 Q. Did they say anything about any of the rest of the
17 family?

18 A. No.

19 Q. And Ms. Young, what part of the county do you live
20 in?

21 A. Montgomery.

22 Q. No, what part of Montgomery County?

23 A. I stay in Kilmichael.

24 Q. Kilmichael?

25 A. Outside of Kilmichael.

26 Q. All right, I think the Defendant has a lot of
27 relatives that live in the Kilmichael area too. Are you
28 aware of any of the Campbells or the Forrests--

29 A. --No.

More Individual Voir Dire - JURY OUT

1 Q. Now I haven't even asked my question yet. If you
2 would, let me at least ask my question. Okay?

3 BY MR. CARTER: Your Honor, I object to that.

4 BY MR. EVANS: Your Honor, I think she is not
5 even giving me an opportunity to ask the question. I
6 would at least like--

7 BY THE JUROR:

8 A. --The reason why I said--

9 BY THE COURT: --Wait, wait--

10 BY THE JUROR: --is because of where I live.

11 BY THE COURT: Y'all can't talk over each other.
12 She can't take it down. You ask the question, and
13 then you can answer it, Ms. Young.

14 BY THE JUROR:

15 A. The reason why I said it is because of where I
16 live.

17 BY THE COURT: Okay, I know, but just let him ask
18 the question. Then I'm going to give you-- I'm not
19 going to let him interrupt you either; okay?

20 BY MR. EVANS:

21 Q. What we are doing is very important because we are
22 trying to find out with each other juror who they may know,
23 what they may know about the case. Nobody is judging you by
24 who you know or what you know or anything else, but it's
25 important to us that we do know these things. You understand
26 that?

27 A. Uh-hum. Yes.

28 Q. It's nothing about you. All right, and what I was
29 trying to get to, because I want to make sure you understand,

More Individual Voir Dire - JURY OUT

1 there are a lot of relatives out there with different names,
2 not just Flowers. And that's what I wanted to find out, if
3 you may know some of the others because I think a lot of them
4 do live in the area that you live in. And that's why I
5 wanted to try to cover that with you. Do you know the
6 Forrests in the community?

7 A. No.

8 Q. You don't know any of them?

9 A. (Juror shakes her head.)

10 Q. How about the Campbells?

11 A. No.

12 Q. Now do you know a Priscilla Flowers Ward?

13 A. No.

14 Q. Okay, and where did you go to school?

15 A. I went in Montgomery County probably until I was
16 maybe fifth grade.

17 Q. Okay. And you are 24 now?

18 A. Uh-hum.

19 Q. Do you know a Clorita Flowers Baskin?

20 A. Who?

21 Q. Clorita Flowers Baskin. She is a Baskin now.

22 A. No.

23 Q. Neechie Correta Flowers?

24 A. No.

25 Q. Angela Jones?

26 A. No.

27 Q. Archie Flowers?

28 A. Yes.

29 Q. You do know Archie?

More Individual Voir Dire - JURY OUT

1 A. By Wal-Mart. Yeah, I met him.

2 Q. How do you know him?

3 A. Just by me going in Wal-Mart.

4 Q. Okay, and that is the father Archie?

5 A. Correct.

6 Q. Do you know the son Archie?

7 A. No.

8 Q. How often do you go in Wal-Mart?

9 A. Maybe once a week, if once a week.

10 Q. Okay. Now the Forrest family in the community, you
11 know, one of the Forrests is even a supervisor here in the
12 county, Mr. Nelson Forrest. You know who he is, I assume?

13 A. No, I don't.

14 Q. You don't even know him?

15 A. No, I don't.

16 Q. Do you know any of the Joneses in the community?

17 A. No.

18 Q. Kittery Jones, Coweal Jones?

19 A. No, I don't.

20 Q. You don't know any of them?

21 A. I don't know any of them.

22 Q. How about the Simpsons?

23 A. No.

24 Q. What have you heard about this case, Ms. Young?

25 A. No more than what I read in the paper. That's
26 about it.

27 Q. When was that?

28 A. Um, probably, what is that? Whenever they had the
29 trial, the last trial, I think, when they had something in

More Individual Voir Dire - JURY OUT

1 the Winona Times. That is about the only time.

2 Q. Okay, do you remember what you read about it then?

3 A. They were just, what was, basically saying they
4 were going to have a retrial or something. I can't really
5 recall.

6 Q. Ms. Young, do you have an opinion at this time
7 whether or not the Defendant is guilty?

8 A. No, I don't.

9 Q. If you were picked as a juror, could you come into
10 this courtroom, listen to the evidence in the courtroom, and
11 base your decision only on what comes out in the courtroom
12 and disregard anything that you may know in the community?

13 A. Yes.

14 Q. And nothing that you know out in the community or
15 have heard would influence your decision at all?

16 A. No.

17 Q. Okay. Now going through the procedure, the first
18 phase of a trial, capital trial is just dealing with guilt or
19 innocence.

20 **BY MR. CARTER:** Your Honor, I object.

21 **BY THE COURT:** Overruled. Go ahead.

22 **BY MR. EVANS:**

23 Q. The second phase deals with the appropriate
24 penalty. You understand that?

25 A. Yes.

26 Q. Okay. Now in this particular case, there can be
27 two penalties. You understand that?

28 A. Yes.

29 Q. One is death penalty. The other is a life

More Individual Voir Dire - JURY OUT

1 sentence.

2 **BY THE COURT:** Now I have been over the procedure
3 with her. Just get to the point.

4 **BY MR. EVANS:** Yes, sir. I will.

5 BY MR. EVANS:

6 Q. Do you yourself lean one way or the other?

7 A. No.

8 Q. You are telling us that if you were picked as a
9 juror, you would come into that phase with an open mind, and
10 you would consider what the State puts on and what the
11 Defense puts on. And if the Judge authorized the death
12 penalty as an appropriate penalty in this case and if the
13 facts justified it, you yourself could vote for the death
14 penalty?

15 A. That's correct. They are not guilty until proven
16 guilty is how I feel.

17 Q. Okay, but I understand that and that is correct,
18 but that is not what I'm asking.

19 **BY MR. CARTER:** Same objection, Your Honor.

20 **BY THE COURT:** Overruled.

21 BY MR. EVANS:

22 Q. What I'm trying to get to is would you listen to
23 both sides just as fairly, listen to what the State puts on
24 because we will be putting on evidence to try to convince the
25 jury that the death penalty is appropriate. They will be
26 trying to put on evidence to justify a life sentence, and
27 what I'm trying to get to would you come in, listen to both
28 of those, consider both of them with the same consideration,
29 and if the Judge tells you that the death penalty is

More Individual Voir Dire - JURY OUT

1 authorized in this case and if the facts justified it, would
2 you yourself vote for the death penalty?

3 A. Yes.

4 Q. Okay. What family member was it of yours that was
5 convicted?

6 A. I had an uncle.

7 Q. What was his name?

8 A. Andrew Witty.

9 Q. Okay. And he was prosecuted here in this county;
10 is that right?

11 A. It happened in Grenada, so I'm assuming Grenada.

12 Q. Was it Grenada? Okay, in this district. Do you
13 remember what he was prosecuted for?

14 A. Murder.

15 Q. And I was the one that prosecuted that case; is
16 that right?

17 A. I have no idea because I was four or five then, so
18 I don't know.

19 Q. Would the fact that he was prosecuted for murder in
20 this district and this is a murder case, and he was convicted
21 of murder, don't you think that that thought would enter into
22 your mind when you were sitting as a juror on a murder case?

23 A. No, because I was four or five when all this went
24 on. So no, I don't.

25 Q. Have you never seen him?

26 A. Yeah, I have seen him.

27 Q. Okay, you still have contact with your father,
28 don't you?

29 A. Yeah.

More Individual Voir Dire - JURY OUT

1 Q. And you know he is in the penitentiary?

2 A. No, my father is not in the penitentiary. My
3 uncle, that is my uncle.

4 Q. I mean your uncle. I'm sorry.

5 A. No, he is not in the penitentiary.

6 Q. Where is he now?

7 A. He is out.

8 Q. He is out now? When did he get out?

9 A. Probably, let me see. I guess two years now or a
10 year, something like that.

11 Q. Okay. What I'm trying to get to, and I'm just
12 asking you because you are the only one that can tell us.
13 Are you telling us that that thought that your uncle was
14 convicted of murder wouldn't enter into your mind while you
15 were trying to determine whether this Defendant was guilty or
16 not?

17 A. No, because my uncle has nothing to do with this
18 trial. This is a separate trial for someone else. I mean
19 that happened before my time. I was four then.

20 Q. Okay.

21 BY MR. EVANS: Nothing further.

22 BY MR. DE GRUY: No questions, Your Honor.

23 BY THE COURT: You may step down, Ms. Young. She
24 will tell you where to go.

25 (Juror 52, Ms. Young leaves the courtroom.)

26 BY THE COURT: Any objection for cause?

27 BY MR. EVANS: Not for cause.

28 BY THE COURT: Have y'all got any objection for
29 cause?

More Individual Voir Dire - JURY OUT

1 BY MR. DE GRUY: No, Your Honor.

2 BY THE COURT: She can go to the room.

3 Christopher Lee Swindoll.

4 (JUROR NO. 53, MR. CHRISTOPHER LEE SWINDOLL, enters
5 the courtroom.)

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. State your name, please, sir.

8 A. Chris Swindoll.

9 Q. Mr. Swindoll, have you ever heard anything about
10 this case?

11 A. Yes.

12 Q. How did you get that information?

13 A. Just around town. Newspaper.

14 Q. Street stalk?

15 A. Newspaper, street talk, right.

16 Q. Did you ever see it in the newspaper or hear about
17 it or the radio or television?

18 A. Yes, sir.

19 Q. Did you know any of the victims in this case?

20 A. Yes, sir.

21 Q. Who did you know?

22 A. Ms. Rigby, BoBo and Ms. Tardy.

23 Q. Were you friends with them?

24 A. Yes, sir. I was friends with BoBo.

25 Q. Okay. How about their families; you know them?

26 A. Yes, sir.

27 Q. Okay, are you friends with them?

28 A. Yes, sir.

29 Q. Okay. Do you know Mr. Flowers?

More Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Do you know any of his family?

3 A. No, sir.

4 Q. Mr. Swindoll, based on what you have heard and
5 based on your relationship with some of the victims' families
6 and some of the victims, have you formed an opinion as to the
7 guilt or innocence of Mr. Flowers in this matter?

8 A. Yes, sir.

9 Q. Would that keep you from being a fair and impartial
10 juror?

11 A. Yes, sir.

12 BY THE COURT: Mr. Evans?

13 BY MR. EVANS: No questions.

14 BY MR. DE GRUY: No questions, Your Honor.

15 BY THE COURT: Okay, you may step down.

16 (Juror 53, Mr. Swindoll leaves the courtroom and
17 was excused though not verbally on the record.)

18 BY THE COURT: Christopher Lee Davis.

19 (JUROR NO. 54, MR. CHRISTOPHER LEE DAVIS, enters
20 the courtroom.)

21 INDIVIDUAL VOIR DIRE BY THE COURT:

22 Q. State your name, please, sir.

23 A. Chris Davis.

24 Q. Mr. Davis, you have got to talk loud enough for
25 them to hear you; okay?

26 A. Chris Davis.

27 Q. Mr. Davis, do you know anything about this case?

28 A. No, sir.

29 Q. Have you ever heard about it?

More Individual Voir Dire - JURY OUT

1 A. Not really.

2 Q. Okay. How long have you lived in this county?

3 A. All my life. Kilmichael.

4 Q. Do you remember when this happened?

5 A. No, sir.

6 Q. Okay. Have you ever read a newspaper about it?

7 A. No, sir.

8 Q. You ever heard about it on the radio or television?

9 A. Yes.

10 Q. All right. Have you ever heard any street talk or
11 gossip about it?

12 A. No, sir.

13 Q. Did you know any of the victims?

14 A. No, sir.

15 Q. Did you know, do you know any of their families?

16 A. No, sir.

17 Q. Do you know Mr. Flowers?

18 A. No, sir.

19 Q. Do you know any of his family?

20 A. No, sir.

21 Q. Mr. Davis, have you formed any opinion as to the
22 guilt or innocence of Mr. Flowers based on anything you might
23 have heard or any reason?

24 A. No, sir.

25 Q. If you are selected as a juror in this case, Mr.
26 Davis, could you listen to the evidence that comes from the
27 witness stand, take my instructions on the law and apply them
28 to the evidence, discuss that with your fellow jurors, and
29 then make a decision based on that and to the exclusion of

More Individual Voir Dire - JURY OUT

1 anything else that happened outside this courtroom?

2 A. No, sir.

3 Q. Sir?

4 A. Um, no, sir.

5 Q. You could not do that?

6 A. Oh, yes.

7 Q. You could do it?

8 A. Yes, sir.

9 Q. Okay. Mr. Davis, do you know of any reason you
10 couldn't be a fair and impartial juror for both sides in this
11 case?

12 A. (Pause) No, sir.

13 Q. Okay. Mr. Davis, at the first stage of the trial
14 the jury would determine whether or not Mr. Flowers was
15 guilty of this. If by a unanimous vote they found beyond a
16 reasonable doubt that he was guilty of it and returned a
17 verdict in that manner, then the case would go to a second
18 phase. And that second phase would be only for the purpose
19 of determining what the penalty would be. In this case there
20 would be only two options. There would be the penalty of
21 death or the penalty of life. At that stage the State would
22 put on evidence of aggravating circumstances that would tend
23 to weigh toward the imposition of the death penalty. The
24 Defendant would put on mitigating circumstances which might
25 be anything concerning Mr. Flowers, like how he grew up and
26 where he went to school and where he worked and all like
27 that, but it would be for the purpose of weighing in favor of
28 the life penalty. Do you understand that, that that is how
29 it would work?

More Individual Voir Dire - JURY OUT

1 A. Well.

2 Q. That you would be, at that time you would be
3 getting some evidence from the State in favor of the death
4 penalty, and you would be getting some evidence from the
5 Defendant in favor of life. Do you understand that?

6 A. Yes, sir.

7 Q. Huh?

8 A. Yes, sir.

9 Q. Okay. I would give the jury an instruction at that
10 time that included all those factors, and it would include
11 the procedure that the jury must go through in order to make
12 those findings. If at that time I instructed the jury or I
13 told the jury that the law allowed the imposition of the
14 death penalty in this case and you found from the facts that
15 the evidence warranted the imposition of the death penalty,
16 could you impose the death penalty?

17 A. No.

18 Q. Your answer was no?

19 A. Yes, sir.

20 Q. Okay.

21 BY THE COURT: Mr. Evans?

22 BY MR. EVANS: Thank you, Your Honor.

23 INDIVIDUAL VOIR DIRE BY MR. EVANS:

24 Q. Mr. Davis, I want to take a couple of different
25 things up with you. To start with, I want to go into the
26 death penalty part. Your belief is pretty strong against the
27 death penalty?

28 A. No. No, sir.

29 Q. You don't believe in the death penalty?

More Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Okay. And because you don't believe in the death
3 penalty, you wouldn't be able to vote for the death penalty
4 in any case regardless of what the law was or what the facts
5 were, would you?

6 A. No, sir.

7 Q. Okay. Now Mr. Davis, in addition to that, I want
8 to cover a few other things with you. You say you do not
9 know the Defendant; is that right?

10 A. No, sir.

11 Q. Do you know any members of his family?

12 A. No, sir.

13 Q. I think his father is Archie Flowers that works at
14 Wal-Mart. Do you know him?

15 A. (Juror shakes his head.)

16 Q. And if you would, I need you to answer out loud
17 because the Court Reporter has to take down what you are
18 saying. You don't know his father?

19 A. No, sir.

20 Q. His mother is Lola Flowers. Do you know her?

21 A. (Juror shakes his head.)

22 Q. I'm sorry. Was that a--

23 A. No, sir.

24 Q. Okay. Do you know any of his relatives?

25 A. No, sir.

26 Q. Okay. Mr. Davis, you were charged with receiving
27 stolen property in Kilmichael; is that correct?

28 A. Yes, sir.

29 Q. And that was for a radio that you had in your

More Individual Voir Dire - JURY OUT

possession?

A. Yes, sir.

Q. And you know Mr. Ira Blueitt, don't you?

A. Yes, sir.

Q. Mr. Blueitt has been convicted of timber theft in this county; is that right?

A. Yes, sir.

Q. And you were with him on that, weren't you?

A. Yes.

Q. The fact that you have been charged and have been related in another crime that is to somewhat still ongoing, do you think that might influence your decision in this particular case?

A. No, sir.

Q. Do you think that you could be fair and impartial regardless of that? Other than the death penalty part?

A. I don't know.

Q. And you are the only one that can answer. Do you think that might enter into your mind?

A. No, sir.

Q. Other than the fact that you could not vote for the death penalty, do you know of any other reason in this particular case that you could not be a fair and impartial juror?

A. No, sir.

(State's Counsel confers.)

BY MR. EVANS:

Q. All right, Mr. Davis, on your original questionnaire, did you fill out the questionnaire that was

More Individual Voir Dire - JURY OUT

1 sent to you, or did somebody else fill it out for you?

2 A. My girlfriend.

3 Q. Your girlfriend filled it out. On the last
4 question on it where it says, Do you have any personal or
5 religious beliefs that would prevent you from voting to
6 impose the death penalty if the facts justified it, do you
7 remember what you put on the questionnaire?

8 A. No, sir.

9 Q. Okay, it has got "No" down. Would that have been a
10 correct answer, or is what you are telling us here in court
11 today the correct answer?

12 A. No.

13 Q. What you're telling us here today is?

14 A. Yeah, no, sir.

15 BY MR. EVANS: Nothing further, Your Honor.

16 BY MR. DE GRUY: Just very briefly, Your Honor.

17 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

18 Q. Mr. Davis, we all understand that you are opposed
19 to the death penalty; is that correct?

20 A. Uh-hum.

21 Q. You are going to have to answer out loud?

22 A. Yes, sir. I heard you.

23 Q. Okay. And so the question is are you so opposed
24 that you could not set that opinion aside and listen to the
25 evidence and make a decision after you have heard all the
26 evidence?

27 A. Yes, sir.

28 Q. It's that strong?

29 A. Yes, sir.

Qualify more jurors

1 **BY MR. DE GRUY:** That's all I have, Your Honor.

2 **BY THE COURT:** You may step down, Mr. Davis.

3 (Juror 54, Mr. Davis leaves the courtroom.)

4 **BY THE COURT:** Julie, let me see you. I'm going
5 to excuse him for cause. Any objection?

6 **BY MR. EVANS:** No objection.

7 **BY MR. DE GRUY:** No objection.

8 **BY THE COURT:** Have you sworn in the others?

9 **BY THE CLERK:** Yes, sir.

10 **BY THE COURT:** They have the first oath, so all I
11 have got to do is qualify them?

12 **BY THE CLERK:** Yes.

13 **BY THE COURT:** Okay.

14 **BY THE CLERK:** There is one out there that has
15 not been sworn. I had told her that she could come in
16 late.

17 **BY THE COURT:** Okay, bring in the other jurors.
18 He can go home.

19 (THE THIRD JURY PANEL WHO REPORTED FOR THE FIRST
20 TIME ON THIS DATE BEING FEBRUARY 5, 2004, ENTERED THE
21 COURTROOM.)

22 **BY THE COURT:** Ladies and gentlemen, you have
23 been called here to sit on a case that we are going to
24 end up trying this week. We are in the middle of jury
25 selection. I needed more jurors to complete the
26 panel, and that is why you have been called. I think
27 those of you who do not get selected to sit on this
28 jury, I am confident we will be through with this
29 process this afternoon, and you can go home. The ones

Qualify more jurors

1 that are selected, of course, will have to stay, and
2 this is a capital case, so you would be sequestered
3 with the other jurors.

4 There are certain qualifications that you must
5 meet in order to serve on a jury in this state. I'm
6 going to go over those with you, and if those, if you
7 meet those qualifications -- I mean if you do not meet
8 these qualifications, you should let me know. You
9 must be at least 21 years of age. You must be a
10 registered voter in Montgomery County. You must be
11 able to read and write, and you cannot have been
12 convicted of the unlawful sale-- you cannot have been
13 convicted of a felony. You cannot have been convicted
14 of the unlawful sale of intoxicating liquors within
15 the last five years, and you cannot be a common
16 gambler nor habitual drunkard. You must not have a
17 case pending in this court, and you must not have
18 served on a jury in this county within the last two
19 years. Does that apply to any of you? (No response.)
20 Okay.

21 (To the Clerk) Did you go over the age and
22 medical?

23 **BY THE CLERK:** Yes, sir.

24 **BY THE COURT:** There are some reasons that I can
25 consider to excuse you for jury service. You need to
26 know on the front end two things. One, that the
27 Legislature provides what those or it states what
28 those reasons are that I can excuse you. I am limited
29 by that, and I must abide by what the Legislature

Qualify more jurors

1 says. So you may have a very valid or good excuse,
2 and I may not be able to honor it because of what, of
3 the rules that are imposed on me.

4 I also want you to know that I think serving on a
5 jury in this country is second to voting, is the most
6 important duty that a citizen of this country has.
7 This system, this that we are in right now, this
8 process that we are in will not function without you.
9 I get to decide the law in these cases, but the jury
10 gets to take that law and decide the facts and
11 ultimately decide the whole case. And I just cannot
12 get this done without you, so it's essential that you
13 be here. And I take that into consideration in
14 granting jury excuses.

15 You have done 65; right?

16 **BY THE CLERK:** Yes.

17 **BY THE COURT:** And medical?

18 **BY THE CLERK:** Yes, sir.

19 **BY THE COURT:** If any of you have somebody in
20 your family who is so sick that you must take care of
21 them, and there is nobody to take care of that person
22 while you are here, I could excuse you for that. Yes,
23 sir.

24 **BY A JUROR:** Yes, sir. My mother is 82 years
25 old, and she can't drive, and she has got some health
26 problems.

27 **BY THE COURT:** All right, what--

28 **BY A JUROR:** She needs me to be at home with her.

29 **BY THE COURT:** All right, and your name, sir?

Qualify more jurors

1 **BY A JUROR:** William H. Mitchell.

2 **BY THE COURT:** Mr. Mitchell, I'm going to excuse
3 you.

4 **BY A JUROR:** Thank you, sir.

5 (Juror 42, William Harold Mitchell, was excused.)

6 **BY THE COURT:** I see there are numerous ladies on
7 this jury panel. Do any of you have small children
8 that there would be nobody to take care of while you
9 were sequestered for this jury?

10 **BY A JUROR:** I have got a grand baby.

11 **BY THE COURT:** Well, who is taking care of the
12 grand baby now? If you are like me, they won't let
13 you take care of the grand baby.

14 **BY A JUROR:** Right now his mother is off today,
15 but that is the onliest reason that he has got a baby
16 sitter today.

17 **BY THE COURT:** There is nobody to take care of
18 that child if you were sequestered but you?

19 **BY A JUROR:** No, not really.

20 **BY THE COURT:** Well, what does "not really" mean,
21 sir?

22 **BY A JUROR:** Well, she possibly could put him in
23 a day care, but still --

24 **BY THE COURT:** Okay, well, I'm going to have to
25 ask you to stay. Anybody else? (No response.) Now
26 is the time to talk to me now. Yes, ma'am.

27 **BY A JUROR:** My husband is a truck driver, and I
28 only, I have a daughter at home and nobody to take
29 care of her but me.

Qualify more jurors

1 BY THE COURT: Okay, what is your name, ma'am?

2 BY A JUROR: Doris Suber.

3 BY THE COURT: All right, you are excused.

4 (Juror 54, Doris Suber, was excused.)

5 BY THE COURT: Yes, ma'am.

6 BY A JUROR: My husband has Alzheimer's, and I
7 couldn't possibly stay away from him at night.

8 BY THE COURT: I understand that, ma'am. Your
9 name?

10 BY A JUROR: Rosa Gregory.

11 BY THE COURT: Ms. Gregory, you are excused.

12 BY A JUROR: Thank you.

13 (Juror 66, Rosie Lee Small Gregory, was excused.)

14 BY A JUROR: Adrienne Smith. I have a seven year
15 old, and there is no one to baby sit.

16 BY THE COURT: And your name was what again?

17 BY A JUROR: Adrienne Smith.

18 BY THE COURT: Agnes Smith?

19 BY A JUROR: Adrienne.

20 BY THE COURT: Adrienne Smith, okay. All right,
21 ma'am, you are excused.

22 (Juror 3, Adrienne Smith, was excused.)

23 BY THE COURT: If you own your own business and
24 that business will shut down if you are here, I can
25 excuse you for that. (Two hands go up.) All right,
26 stand up.

27 BY A JUROR: I do own a small business here, and
28 I have to be there. If I'm not there, I have to
29 close.

Qualify more jurors

1 **BY THE COURT:** What type of business is it,
2 ma'am?

3 **BY A JUROR:** A retail business downtown.

4 **BY THE COURT:** Okay, there is nobody to run it
5 without you?

6 **BY A JUROR:** No, sir.

7 **BY THE COURT:** And your name.

8 **BY A JUROR:** Margaret Harris.

9 **BY THE COURT:** Okay, Ms. Harris, you are excused.
10 (Juror 69, Margaret W. Harris, was excused.)

11 **BY A JUROR:** Yes, sir. I am part owner of a
12 manufacturing facility here. It would be undue
13 hardship on us, on me, myself and my employees also if
14 I was gone for an extended period of time.

15 **BY THE COURT:** Well, it is going to be a hardship
16 on anybody that is involved with this case, and that
17 is not the test. The test is whether or not it will
18 shut down if you are not there.

19 **BY A JUROR:** Yes, sir. We would probably have to
20 lay them off and put them on unemployment.

21 **BY THE COURT:** Okay, and--

22 **BY A JUROR:** -- I am the only one capable of
23 doing -- well, I have no office help other than
24 myself. I do all payroll, all tax preparation.

25 **BY THE COURT:** What is your name, sir?

26 **BY A JUROR:** Thomas Fisackerly.

27 **BY THE COURT:** You are excused.

28 (Juror 28, Thomas Lee Fisackerly, was excused.)

29 **BY THE COURT:** Yes, ma'am.

Qualify more jurors

1 **BY A JUROR:** Yes, sir. I am the sole employee at
2 the Kilmichael Public Library. If such a substitute
3 cannot be found, they would have to shut down. And I
4 have a few substitutes, and they are not always
5 reliable, so I don't know.

6 **BY THE COURT:** If you are not there, there is no
7 Kilmichael library; right?

8 **BY A JUROR:** That's right.

9 **BY THE COURT:** Okay, what is your name, ma'am?

10 **BY A JUROR:** Bish, Mary Elizabeth Bishop.

11 **BY THE COURT:** You are excused.

12 **BY A JUROR:** Thank you.

13 (Juror 60, Mary Elizabeth Bishop, was excused.)

14 **BY THE COURT:** Anybody else got any reason they
15 want to talk to me about? Yes.

16 **BY A JUROR:** I am the 4-H agent in Carroll
17 County, and I have seven kids going to the Dixie
18 National Monday, and I have worked with them all year
19 with these animals.

20 **BY THE COURT:** Okay.

21 **BY A JUROR:** I am the only 4-H agent they have.

22 **BY THE COURT:** Okay, your name?

23 **BY A JUROR:** Amy Beth Ware.

24 **BY THE COURT:** Okay, I'm going to excuse you,
25 Ms. Ware.

26 (Juror 67, Amy Beth Ware, was excused.)

27 **BY THE COURT:** Yes, sir. Did I see a hand? Yes,
28 sir.

29 **BY A JUROR:** Yes, sir. I am in Unit 32 at

Qualify more jurors

1 Parchman as a preacher, and I'm afraid that if I heard
2 the facts, it would make me partial either to him or
3 against him.

4 **BY THE COURT:** Well, that is a question for later
5 in the process. Thank you though. Okay, if y'all
6 will stand, there is another oath-- well, okay.

7 **BY A JUROR:** I have sleep apnea. Would that
8 affect me any?

9 **BY THE COURT:** Do what?

10 **BY MR. DE GRUY:** Sleep apnea.

11 **BY THE COURT:** Oh, I was talking to Ms. Halfacre.
12 No, sir. I don't think that will affect your service.
13 If you will stand, there is another oath for you to
14 take.

15 **BY THE CLERK:** Would you please raise your right
16 hand. You and each of you do solemnly swear or affirm
17 that you will well and truly try all issues and
18 execute all writs of inquiry that may be submitted to
19 you or left to your decision by the Court and a true
20 verdict give according to the evidence, so help you
21 God?

22 **BY THE JURORS:** I do.

23 **BY THE COURT:** Ladies and gentlemen, I'm going to
24 excuse y'all until about 1:15. If you would be back
25 here at 1:15, we will continue this process. You
26 should not discuss this matter with anybody or allow
27 it to be discussed in your presence during this
28 period. If you run into any media coverage, don't
29 look at it or listen to it. I will see you at 1:15.

Voir Dire of third panel

1 (NEW JURY PANEL WAS RELEASED TO GO TO LUNCH.)

2 BY THE COURT: Now I need the ones who are back
3 here.

4 (Jurors who had just been through individual voir
5 dire enter the courtroom.)

6 BY THE COURT: This is a line up. We are not
7 through yet. We are closing in on it, but we are not
8 there yet. So I have had to qualify some more jurors,
9 and I have got to question them some after lunch. I'm
10 going to let y'all go for lunch. You can go wherever
11 you would like. Just be back here by 1:15, and just
12 go on back to that room back there. Do not discuss
13 this amongst yourselves nor allow anybody to discuss
14 it with you, and I will see y'all back here.

15 (FOLLOWING THE NOON RECESS ON FEBRUARY 5, 2004, THE
16 THIRD PANEL OF JURORS WERE SEATED IN ORDER AND GIVEN NUMBERS
17 55 THROUGH 79. PRESENT WERE ALL COUNSEL AND THE DEFENDANT.
18 THE COURT ENTERED THE COURTROOM AT THE CONCLUSION OF THE ROLL
19 CALL.)

20 VOIR DIRE EXAMINATION BY THE COURT:

21 Good evening. What I'm getting ready to do here is
22 conduct what is called the voir dire examination. And that
23 is basically, all that is going to be is a question and
24 answer period between me and, and the lawyers will probably
25 have some questions for you down the road too. The only
26 purpose for this is to determine who can be a fair and
27 impartial juror on this particular case. Each case is
28 different. It has different facts and different people
29 involved, and therefore, your relationships with some of

Voir Dire of third panel

1 those people or what has happened to you in life may affect
2 whether you could be fair and impartial in each different
3 case. You might be able to be -- you might not be able to be
4 fair and impartial on this case but be fair and impartial on
5 one if we had another one next week. So we have to do this
6 before every trial.

7 None of these questions are for the purpose of
8 unnecessarily prying into your personal affairs, nor are they
9 for the purpose of embarrassing you in any way. But there
10 are certain things we have to know about, some things that
11 may have happened in your life and certain relationships that
12 you might have that might affect whether or not you could be
13 fair and impartial.

14 This is the State of Mississippi versus Curtis
15 Flowers. This is a, the charges in this case are charges of
16 capital murder. This is a case that could, depending on what
17 the jury does, involve the death penalty. The State in this
18 case is represented, as it is in every criminal case, by the
19 District Attorney's Office. The District Attorney in our
20 district is Doug Evans. This is him right here, and Clyde
21 Hill is his assistant, who is assisting him today.

22 The Defendant is represented by Andre de Gruy,
23 Stacy Ferraro, and Ray Charles Carter. Are any of you
24 related by blood or marriage to any of the attorneys in this
25 case? How many of you know them? (Several hands go up.)
26 Okay.

27 Have y'all got them numbered?

28 **BY MR. EVANS:** Yes.

29 **BY THE COURT:** Yeah, okay.

Voir Dire of third panel

1 Q. All right, Mr. Williams. Of course, you are in
2 your highway patrol uniform.

3 A. (BY JUROR 60, MR. JAMES TAYLOR WILLIAMS) Yes, sir.

4 Q. So you obviously know the District Attorney; is
5 that correct?

6 A. Yes, sir.

7 Q. Okay. Do you know any of the other attorneys?
8 Well, you know Mr. Hill, I am sure?

9 A. Yes, sir.

10 Q. Do you know any of the other attorneys in this
11 case?

12 A. Not all of them on the defense side, I don't.

13 Q. Okay. You are not related to any of them, are you?

14 A. No, sir.

15 Q. Is there anything about the fact that you are with
16 the Mississippi Highway Patrol that would affect you in this
17 case, or have you or your affiliation through that office
18 with the District Attorney that would affect you in this case
19 and keep you from being fair and impartial?

20 A. Yes, sir. At this time I am also subpoenaed as a
21 witness to this case.

22 Q. Okay. Thank you, Mr. Williams.

23 All right, who else? Yes, sir. Number 62, Mr.
24 Avent. You are presently a law enforcement officer?

25 A. (BY JUROR 62, MR. JOHN GORDON AVENT) That's
26 correct.

27 Q. In Kilmichael; right?

28 A. Correct.

29 Q. Okay, in the past you have been a deputy sheriff

Voir Dire of third panel

1 for this county; is that correct?

2 A. Correct.

3 Q. And that has been since Mr. Evans has been District
4 Attorney?

5 A. Correct.

6 Q. And since Mr. Hill has been his assistant; is that
7 also correct?

8 A. Yes.

9 Q. Would your association with them through that
10 process affect you in this case and keep you from being fair
11 and impartial?

12 A. Yes, it would.

13 Q. Okay, thank you, sir.

14 Who else? Number 61, Mr. Gholston. Who is it that
15 you know, Mr. Gholston?

16 A. (BY JUROR 61, MR. TIMOTHY GHOLSTON) Mr. Evans and
17 Mr. Hill, sir.

18 Q. Okay, how is it that you know them? I tell you
19 what; I'm going to need for you to stand up. I forget my
20 court reporter is back here, and she can't hear you.

21 A. I have known him on a couple of cases I came and
22 heard him on.

23 Q. You came to hear on and came to court?

24 A. That's correct.

25 Q. All right. In those cases, Mr. Gholston, was the
26 District Attorney's Office on your side of the case or on the
27 other side of the case?

28 BY MR. EVANS: Your Honor, he is an officer.

29 BY THE JUROR:

Voir Dire of third panel

1 A. I am just an officer.

2 Q. Okay. I'm sorry. Were you a witness in any of
3 those cases?

4 A. No, sir.

5 Q. Mr. Gholston, through your -- where are you an
6 officer for the record?

7 A. Sheriff's Department, Montgomery County Sheriff's
8 Department.

9 Q. Sheriff's Department, all right. Mr. Gholston,
10 would that, because you have that relationship with the
11 District Attorney's Office through you being a law
12 enforcement officer, would that affect you in this case and
13 keep you from being fair and impartial?

14 A. Yes, sir.

15 Q. It would?

16 A. Thank you, sir.

17 Q. Number 76.

18 A. (BY JUROR 76, BECKY LYNN ABLES) I have dealt with
19 Mr. Evans on previous occasions. I sell firearms
20 dealerships, and so I have had to be, I had to testify at
21 some of his case hearings.

22 Q. Okay. Would that association with him affect you
23 at all in this case and keep you from being fair and
24 impartial?

25 A. No, sir, not at this time.

26 Q. Okay. Thank you.

27 Anybody else? Yes, ma'am.

28 A. (BY JUROR 56, MS. LORA DEE MCCOLLOUGH) Yes, sir.
29 My mother is sick.

Voir Dire of third panel

1 Q. What is your number, please?

2 A. 56.

3 Q. Okay.

4 A. And myself and my uncle are the only two that are
5 here in town to take care of her.

6 Q. I didn't understand what you are telling me, ma'am.

7 A. My mother is very sick. She is in the hospital
8 right now, and me and my uncle are the only two that are here
9 in town that can help take care of her.

10 Q. Okay. There is nobody to do that but y'all?

11 A. Right. And he has two other people in our family,
12 my grandmother and my aunt, that he takes care of also.

13 Q. All right, Ms. McCollough, you can have a seat. I
14 will get back with you.

15 Anybody been on the other side of the case from the
16 State of Mississippi where Mr. Evans represented one side,
17 and you were on the other side, or you had a family member on
18 the other side? Yes, ma'am. Would you stand up, please,
19 ma'am.

20 A. (BY JUROR 65, MS. JUDY PALMERTREE DEES) Yes, sir.

21 Q. And your number? I need your number.

22 A. 65.

23 Q. Okay.

24 A. Both my brother and my father have been. My father
25 has been in prison, and my brother is there now.

26 Q. Okay. Did Mr. Evans' office prosecute them?

27 A. Yes, sir.

28 Q. How long ago was that?

29 A. My brothers was about two years ago.

Voir Dire of third panel

1 Q. Okay. Would that fact affect you in this case and
2 keep you from being fair and impartial?

3 A. No, sir.

4 Q. Thank you.

5 Anybody else? Yes. Number 55.

6 A. (BY JUROR 55, MR. MARVIN W. HALFACRE, JR.) I will
7 say that I have met these gentlemen before because I was in
8 law enforcement for a short period, and I was a witness for
9 them in a case. But that was nine or ten years ago, so I
10 don't know them personally.

11 Q. Okay. Mr. Halfacre, would that affect you at all
12 in this case and keep you from being fair and impartial?

13 A. No, sir.

14 Q. Thank you.

15 Number 66.

16 A. (BY JUROR NO. 66, MS. REBA LANE BLAYLOCK) I have a
17 brother-in-law that I think was handled with Mr. Evans.

18 Q. Is that matter over with?

19 A. Yes.

20 Q. How long ago was that?

21 A. Nine years.

22 Q. Would that affect you at all in this case?

23 A. No.

24 Q. All right.

25 Anybody else? Number 73. Ms. Vaughn.

26 A. (BY JUROR 73, MS. MARGIE DALE VAUGHN) I know Mr.
27 Doug Evans.

28 Q. Okay. Do you know him professionally, or do you
29 know him socially?

Voir Dire of third panel

1 A. I was in court a year ago, last year.

2 Q. Okay. Would that relationship, would that
3 experience affect you at all in this case?

4 A. Yes.

5 Q. It would. Okay, thank you, ma'am.

6 Anybody else? (No further response.)

7 The Defendant in this case is Curtis Flowers. This
8 is Mr. Flowers right here. Are any of you related by blood
9 or marriage to Mr. Flowers? Yes, ma'am. Could you stand up,
10 please, and let me see your number.

11 Number 63, Ms. Jamerson.

12 A. (BY JUROR 63, MS. BETTY JEAN JAMERSON) U-hum.
13 Related by marriage.

14 Q. Okay. And your husband then is related to him; is
15 that right?

16 A. Right.

17 Q. And what is your husband's name?

18 A. Reverend Jamerson. He is back there. Reverend
19 Louis Jamerson.

20 Q. All right. Ms. Jamerson, would that relationship
21 with Mr. Flowers affect you in this case and keep you from
22 being--

23 A. -- Yes, it would.

24 Q. Thank you, ma'am. You could not be fair and
25 impartial; is that right?

26 A. No, I couldn't.

27 Q. Thank you. Anybody else?

28 How many of you know Mr. Flowers? Mr. Halfacre,
29 how is it that you know him?

Voir Dire of third panel

1 A. (BY JUROR 55, MR. MARVIN W. HALFACRE, JR.) I went
2 to high school with him, and I also worked at Big Star with
3 him for a couple of years.

4 Q. Would that association with him affect you in this
5 case and keep you from being fair and impartial?

6 A. No, sir.

7 Q. Yes, sir. Mr. Avent, you have already said you
8 couldn't be fair and impartial, so you don't have to follow
9 it up. But I appreciate that answer.

10 (NOTE: That was juror number 62, Mr. Avent, that
11 responded.)

12 Yes, ma'am.

13 A. (BY JUROR 65, MS. JUDY PALMERTREE DEES) I went to
14 school with him, and I also went to school with both of his
15 sisters.

16 Q. Ms. Dees, would that relationship with him affect
17 you at all in this case?

18 A. No, sir.

19 Q. Thank you.

20 Yes, ma'am. Number 78, Ms. Thompson.

21 A. (BY JUROR 78, MS. FELICIA THOMPSON) I don't know
22 him personally, but I know him through a friend. I graduated
23 with him in high school.

24 Q. Would that affect you at all in this case and keep
25 you from being fair and impartial?

26 A. No.

27 Q. Thank you.

28 **BY MR. EVANS:** What number was that, Your Honor?

29 **BY THE COURT:** 78.

Voir Dire of third panel

BY THE COURT:

Q. Anybody else? (No further response.)

Other than Mr. Williams, Mr. Avent and Mr. Gholston, is there anybody on the panel, anybody else on the panel who is presently in law enforcement? (No response.) How many, if any of you, have been a member of law enforcement in the past? Mr. Halfacre, you have?

A. (BY JUROR 55, MR. MARVIN W. HALFACRE, JR.) Yes, sir.

Q. In what capacity?

A. I was a police officer for Winona Police Department.

Q. All right, how long ago was that?

A. About ten years ago, nine or ten years ago.

Q. Would that fact affect you in this case and keep you from being fair and impartial?

A. No, sir.

Q. Were you on the force when this incident occurred?

A. No, sir. I had gotten off probably three months before.

Q. Thank you, sir. Anybody else been in law enforcement in the past?

How many of you have got relatives in law enforcement? All right, yes. Ma'am, if you would stand up. And I need to see your number, please, ma'am. Number 79. Ms. Shepherd, who is that?

A. (BY JUROR 79, MS. SANDRA SHEPHERD) Joel Hill.

Q. And where is he an officer?

A. He is in Montgomery County.

Voir Dire of third panel

1 Q. Okay. Would that fact affect you at all in this
2 case and keep you from being fair and impartial?

3 A. Yes, sir.

4 Q. Thank you.

5 Anybody else?

6 A. (BY JUROR 75, MR. ODIE RINGOLD) Did you say
7 cousin?

8 Q. I'm sorry. 75, Mr. Ringold?

9 A. Yes. Did you say have any cousin that is an
10 officer, court officer?

11 Q. Well, any relative.

12 A. This man here.

13 Q. Mr. Gholston?

14 A. Yes, sir.

15 Q. You are kin to him?

16 A. Yes.

17 Q. Okay. Would that relationship with him affect you
18 at all in this case and keep you from being fair and
19 impartial?

20 A. No, sir.

21 Q. Thank you.

22 Anybody got a relative that was in law enforcement
23 in the past? Number 76. Ms. Ables.

24 A. (BY JUROR 76, MS. BECKY LYNN ABLES) My brother,
25 Wesley Green, he was with the Winona Police Department
26 approximately back in '89 or '90.

27 Q. Would that affect you at all in this case and keep
28 you from being fair and impartial?

29 A. No, sir.

Voir Dire of third panel

1 Q. Okay. Thank you, ma'am.

2 Anybody else? Okay.

3 The way a matter gets to this point is it has to go
4 through the grand jury. The grand jury consists of citizens
5 of the county. When an incident occurs, the District
6 Attorney's Office will present evidence to that grand jury.
7 The state will not present all its evidence, and it will
8 present some evidence that probably would not be admissible
9 in court. The defense won't put on any witnesses at that
10 stage, and the grand jury will not get my instructions on the
11 law. The reason for all that is, is because the grand jury
12 does not have to decide the guilt or innocence of anybody.
13 They need to decide, they only have to decide whether they
14 think a crime has been committed, and if so, do they think
15 there is enough evidence presented to them for this matter to
16 go further so that there will be a trial by what is called a
17 petit jury, which would be you.

18 If twelve out of twenty decide that, then an
19 indictment is issued, and this case ends up, of course, for a
20 jury to try. At a trial, an actual trial there would only be
21 twelve members of the jury, and all twelve would have to vote
22 unanimously to return a verdict. Do you all understand that?

23 Do you all understand that the Defendant is
24 presumed innocent until such time as the State proves his
25 guilt beyond a reasonable doubt? Everybody understand that?

26 Do you also understand that the indictment is
27 absolutely no evidence of guilt. All it is is a paper
28 document which we use to get to this point. Do each of you
29 understand that?

Voir Dire of third panel

1 Is there anybody on this panel that would hold the
2 fact that Mr. Flowers has been indicted in this matter as
3 some evidence of his guilt? Okay, I take it by your silence
4 you will not.

5 The burden of proof in any criminal case is on the
6 State of Mississippi. As I told you, the Defendant is
7 presumed innocent until such time as the State proves his
8 guilt beyond a reasonable doubt, and reasonable doubt is the
9 burden that the State has. Does anybody disagree with that
10 being the burden, think it ought to be something else, either
11 higher or lower or anything else?

12 Will you all accept the fact that that is what the
13 standard is? Okay.

14 Have any of you ever been the victim of a crime?
15 Yes, sir. I need for you to stand up, please, sir, and let
16 me see your number. Number 77. Yes, sir.

17 A. (BY JUROR 77, MR. JONAS WAYNE HORN) Auto theft
18 twice.

19 Q. Mr. Horn, when did that occur?

20 A. 1996. Twice.

21 Q. You have got to stand up because she can't hear
22 you.

23 A. 1996, twice.

24 Q. Okay. Would that fact affect you at all in this
25 case and keep you from being fair and impartial?

26 A. No, sir.

27 Q. Okay. Anybody else been a victim of a crime?

28 Yes, ma'am. Number 73. Ms. Vaughn?

29 A. (BY JUROR 73, MS. MARGIE DALE VAUGHN) I was guilty

Voir Dire of third panel

1 of hitting a deputy in the head that broke into my house.

2 Q. Okay. And I believe you told me while ago because
3 of that incident, you could not be fair and impartial. Is
4 that correct?

5 A. Yes.

6 Q. Thank you, ma'am.

7 Okay, have any -- yes, ma'am. 68.

8 A. (BY JUROR 68, MS. LINDA AILEEN DAVIS) Are you
9 talking about break-ins or anything like that?

10 Q. No, I'm talking about anything. I really, to tell
11 you the truth, specifically talking about crimes of violence,
12 but anything will do -- burglaries, grand larcenies, anything
13 like that. But especially if you have been a victim of some
14 kind of violent crime.

15 A. Well, I haven't violent crimes, but my husband and
16 I have a convenience store in Stewart, and we have been
17 broken into a lot of times.

18 Q. Ms. Davis, would that fact affect you at all in
19 this case and keep you from being fair and impartial?

20 A. Well, I don't really know. I think that, I have
21 this feeling that I have read in the paper about all this
22 case.

23 Q. Okay, we are going --I don't want you to talk about
24 that now.

25 A. Okay. Well, I mean --

26 Q. -- I'm going to give you an opportunity--

27 A. --I don't know whether it would or not.

28 Q. Huh? Ma'am?

29 A. I don't know whether it would or not.

Voir Dire of third panel

1 Q. Well, the point, what I'm trying to ask you at this
2 point in time is though would the fact your store has been
3 broken into affect you in relation to this case? Those other
4 things I'm going to ask you about later.

5 A. Okay. No, I don't guess it would.

6 Q. Okay, thank you, ma'am.

7 Number 76, Ms. Ables.

8 A. (BY JUROR 76, MS. BECKY LYNN ABLES) My father was
9 murdered when I was a child, and for that reason I don't
10 believe I need to be a part of the jury.

11 Q. Would it affect you to the point where you couldn't
12 be fair and impartial?

13 A. Yes, it would.

14 Q. Thank you, Ms. Ables. Anybody else?

15 Yes, number 70.

16 A. (BY JUROR 70, MS. SHERRY LANCASTER) Yes. My
17 family owns a business in Duck Hill, and we, just like her,
18 we have been broken into several times.

19 Q. Would the--

20 A. -- and we have prosecuted people and put them in
21 the jail house.

22 Q. Okay. Would that fact, the fact that that's
23 happened to you affect you in this case?

24 A. Yes, I think it would.

25 Q. Thank you, Ms. Lancaster. You don't think you
26 could be fair and impartial; is that right?

27 A. No.

28 Q. Okay. How many of you have had a family member who
29 has been a victim of a crime? Yes, number 77, Mr. Horn.

Voir Dire of third panel

1 A. (BY JUROR 77, MR. JONAS WAYNE HORN) My mother was
2 mugged.

3 Q. How long ago was that, Mr. Horn?

4 A. Ten years ago.

5 Q. Would that fact affect you in this case and keep
6 you from being fair and impartial?

7 A. Probably so, yes, sir.

8 Q. All right.

9 Okay, Mr. Ables, there again, you have already told
10 me you couldn't be fair and impartial.

11 So who else? Did I see another? Yes, sir. Number
12 69.

13 A. (BY JUROR 69, MR. THOMAS B. THOMPSON) My wife used
14 to work at Bill's Dollar Store down here, and his mother used
15 to work with my wife.

16 Q. Okay. I'm going to ask you those questions later.
17 Right now I need to know if you have had any family member
18 who has been a victim of a crime?

19 A. Not lately.

20 Q. Well ever. Have you ever had--

21 A. I had a suburban ripped off years ago.

22 Q. Would that affect you in this case at all?

23 A. Pardon?

24 Q. Would that fact affect you, the fact that you had
25 something stolen from you?

26 A. Well, I don't guess it would in a case like this.

27 Q. Okay, thank you, sir.

28 Yes, ma'am. Number 66.

29 A. (BY JUROR 66, REBA LANE BLAYLOCK) My father was

Voir Dire of third panel

1 killed just when I was a baby.

2 Q. He what?

3 A. He was killed when I was a baby.

4 Q. Ms. Blaylock, did that occur here?

5 A. No.

6 Q. Would that fact affect you at all in this case and
7 keep you from being fair and impartial?

8 A. No.

9 Q. Okay. Anybody else?

10 Okay, the next question I'm going to ask is not
11 intended once again to pry into your personal affairs, but it
12 is relevant to the issues that we have here today. So I need
13 to know if any of you have been charged with a felony in the
14 past?

15 Ms. Vaughn, I believe you had had some problem with
16 the law. Is that correct?

17 A. (BY JUROR 73, MS. MARGIE DALE VAUGHN) Yes.

18 Q. Okay. Anybody else ever been charged with a
19 felony?

20 Have any of you had a family member who has been
21 charged with a felony? Yes, Ms. Dees, you have already
22 explained that, haven't you, and Mr. Evans was the prosecutor
23 in that?

24 A. (BY JUROR 65, MS. JUDY PALMERTREE DEES) Yes, sir.

25 Q. All right. Anybody else?

26 Okay, number 75. Mr. Ringold.

27 A. (BY JUROR 75, MR. ODIE RINGOLD) Yeah, my son.
28 Auto burglary.

29 Q. Okay, how long ago was that?

Voir Dire of third panel

1 A. Last year.

2 Q. Is that matter over with?

3 A. Still, he is still on probation now.

4 Q. Okay, but I mean he has been through court and
5 everything; is that right?

6 A. Yes, sir.

7 Q. Okay. Is there anything about that that would
8 affect you in this case and keep you from being fair and
9 impartial?

10 A. No, sir.

11 Q. Okay. Mr. Gholston, I believe you would have the
12 same kinship there, but you have also, because you are an
13 officer, have told me that you couldn't be fair and
14 impartial. Isn't that correct?

15 A. (BY JUROR 61, MR. TIMOTHY GHOLSTON) Yes, sir.

16 Q. Thank you, sir.

17 Anybody else? Okay.

18 At the end of the case, I will give you
19 instructions on the law. I get to decide the law in this
20 case, and you get to decide the facts. You take my law, put
21 it to the facts, and the jury makes the decision. But I do
22 get to decide what the law is, and you are under your oath as
23 jurors, must follow that law whether you agree with it or
24 not. Is there anybody here who will not follow my
25 instructions on the law if they disagree with me on the law?

26 I am at this point in time, this next question
27 relates to the guilt part of a trial. Is there anybody here
28 who would have a religious or philosophical belief that would
29 prevent them from passing judgment on their fellow man?

Voir Dire of third panel

1 All right, number 67. Ms. Tansey?

2 A. (BY JUROR 67, MS. LINDA KAY TANSEY) Yes. I don't
3 believe in the death penalty.

4 Q. I know, but that is not my question right now. I
5 will have some other questions about that just shortly. What
6 I'm talking about now is from just the standpoint of -- let's
7 say the death penalty wasn't involved in this case. Could
8 you sit on a jury where you had to judge whether somebody was
9 guilty or innocent?

10 A. Probably, yes.

11 Q. You could do that? Okay, thank you, ma'am.

12 Okay. Number 71.

13 A. (BY JUROR 71, MR. BENNY PARK) I don't, I don't
14 think I could do that.

15 Q. Do what?

16 A. I don't think I could sit on and judge my fellow
17 man.

18 Q. Okay, in any circumstance; is that right?

19 A. No, sir.

20 Q. Okay, Mr. Park, thank you.

21 Anybody else? Okay.

22 Once again, I have left my file. (The Court
23 retrieves the court file from the bench.)

24 I remind you once again that an indictment is no
25 evidence of anybody's guilt, but the indictment in this case
26 alleges that on July the 16th, 1996, Curtis Flowers did kill
27 and murder four people at the Tardy Furniture Company,
28 furniture store -- Bertha Tardy, BoBo Stewart, Carmen Rigby,
29 and Robert Golden. I don't want to know what you know, but I

Voir Dire of third panel

1 need to know how many of you know anything about it, ever
2 heard of it? Everybody? That's what I figured. Okay.

3 I'm going to have some more in depth questions
4 along this line, but I'm going to ask one on the front end so
5 I can get an idea who feels what. As I said, this case could
6 involve the death penalty. We can only obviously involve the
7 death penalty if at the first phase the jury unanimously
8 beyond a reasonable doubt finds the Defendant guilty. If
9 that happens, then we have a second phase where some other
10 evidence and stuff is put on, which I'm going to explain to
11 you further here in just a little bit. And at that phase
12 then there are two options that the jury would have would be
13 death, or it would be life. And the only question I have for
14 you at this particular point is I need to know if any of you
15 have any religious or personal opinions about the death
16 penalty that would prohibit you from imposing it?

17 Okay, number 63, all right. And number 67, and
18 let's see. Who else? Number 64. Anybody else? Number 75.
19 Okay, anybody else? Okay.

20 All right, ladies and gentlemen, what we are going
21 to do now is what we have been doing now for three or four
22 days is there are -- almost all of you have heard something
23 about this case. Obviously, we don't want what you have
24 heard maybe to affect what somebody else heard and where
25 anybody starts forming opinions based on what everybody else
26 heard. So we are going to do what is called individual voir
27 dire, and we are going to ask you to step outside in just a
28 second. We will call you in one by one where we can talk to
29 you individually about what you know. And then I will also

Individual Voir Dire - JURY OUT

1 have some further questions about the death penalty when we
2 get to that point. If y'all would step outside, and I think
3 they have got plenty of chairs for you. The bailiffs will
4 bring you in when we call you.

5 JURORS LEAVE THE COURTROOM.

6 **BY THE COURT:** Marvin Halfacre.

7 (JUROR NO. 55, MR. MARVIN W. HALFACRE, JR., enters
8 the courtroom.)

9 **BY THE COURT:** Right there.

10 INDIVIDUAL VOIR DIRE BY THE COURT:

11 Q. State your name for the record, please.

12 A. Marvin Halfacre, Jr.

13 Q. Mr. Halfacre, do you know anything about this case?

14 A. Yes, sir. I do.

15 Q. Okay. How did you get that information?

16 A. Just from hearsay, from the newspapers, internet,
17 radio, television.

18 Q. Now just so we can make the record clear, your
19 mother is the--

20 A. --Circuit Clerk.

21 Q. --Circuit Clerk. Okay. You have heard street talk
22 and gossip?

23 A. Yes, sir.

24 Q. Have you ever talked to anybody that actually
25 purported to know the facts and were actually witnesses?

26 A. No, sir.

27 Q. Did you know any of the victims?

28 A. Yes, sir. I knew Ms. Bertha Tardy. When I was in
29 the eighth and ninth grade, I did yard work for her. I also

Individual Voir Dire - JURY OUT

1 know her daughter.

2 Q. Roxanne Ballard?

3 A. Ms. Roxanne Ballard. Her child and my child are
4 good friends.

5 Q. Okay. Do you know any of the other victims?

6 A. No, sir.

7 Q. How about other than Ms. Ballard and her immediate
8 family, do you know any other family of the--

9 A. I knew BoBo Stewart's brother, Dale Stewart. He
10 and I went to school together.

11 Q. All right. Do you know Mr. Flowers?

12 A. Yes, sir. I do.

13 Q. How do you know him?

14 A. I went to school with him, and I also worked at Big
15 Star with him for a year or two while I was in high school.

16 Q. Okay. How about his family; do you know them?

17 A. No, sir.

18 Q. Mr. Halfacre, based on what you have heard either
19 in the media or in street talk or gossip and also taking into
20 account your relationships with some of the victims or their
21 family and with Mr. Flowers, have you formed an opinion as to
22 the guilt or innocence of Mr. Flowers?

23 A. To some extent, but it could be changed based on
24 the facts because I haven't seen the facts and the evidence.

25 Q. Okay. If you are selected on the jury, could you
26 listen to the facts that come in from the witness stand, come
27 off the witness stand and then at the end of the trial when I
28 give the jury the instructions on the law, take those
29 instructions and apply them to the facts as you see them, and

Individual Voir Dire - JURY OUT

1 discuss it with your fellow jurors, and then make a decision
2 based on that to the exclusion of any relationships you might
3 have had or anything you might have heard?

4 A. Yes, sir. I could.

5 Q. Do you know, Mr. Halfacre, any reason you could not
6 be fair and impartial?

7 A. No, sir.

8 Q. Okay. The first phase of the trial would be the
9 guilt phase of the trial. As I told you, at that stage the
10 jury would have to find unanimously beyond a reasonable doubt
11 that Mr. Flowers was guilty before there would be a second
12 stage. If we go to the second stage, then the only issues
13 would be whether or not to impose, the jury should impose the
14 death penalty or life in prison. At that stage the State
15 would put on additional evidence, and that evidence would be
16 of aggravating circumstances which would be for the purpose
17 of leaning or weighing toward, in a position of the death
18 penalty. The Defendant would put on mitigating facts or
19 circumstances which could be almost anything, and it would
20 not have to relate to this trial at all. It could be things,
21 how he grew up and what his family was like and those type of
22 things, but they would all be for the purpose of showing that
23 no, death shouldn't be the sentence; it ought to be life. Do
24 you understand that that is the process?

25 A. Yes, sir.

26 Q. Okay. At the end of all that, hearing that
27 evidence and hearing from the attorneys at that stage, then I
28 would issue an instruction that had those aggravating
29 circumstances and mitigating circumstances in them, in it.

Individual Voir Dire - JURY OUT

1 And it would also have, it would define the procedure that
2 the jury was to follow in evaluating that and ending up with
3 a verdict. Do you understand that?

4 A. Yes, sir.

5 Q. If at the end of the trial, I instructed you that
6 the -- well, at the end of the trial I would instruct you
7 that the law authorized the imposition of the death penalty,
8 and if you found from the facts of the case that the facts
9 warranted the imposition of the death penalty, could you
10 impose the death penalty?

11 A. Yes, sir. Looking at the facts, I believe I could.

12 Q. Okay. After listening to the evidence at that
13 stage and having the benefit of my instructions on the law,
14 could you consider both options - life and death, or would
15 you automatically impose the death penalty?

16 A. No, sir. I would consider both options.

17 **BY THE COURT:** Mr. Evans.

18 **BY MR. EVANS:** Thank you, Your Honor.

19 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

20 Q. Good evening.

21 A. Good evening.

22 Q. I just want to cover a few things with you. Of
23 course, you have been in law enforcement in the past?

24 A. Yes, sir.

25 Q. You know a little bit about how the court system
26 works?

27 A. A little bit, sir.

28 Q. What we are attempting to do is find a jury that --
29 of course, as you saw this morning, everybody has heard

Individual Voir Dire - JURY OUT

1 something about the case.

2 A. Yes, sir.

3 Q. So we are trying to find a jury that would be able
4 to disregard anything that they have heard, disregard the
5 fact that they may know the people, and in this case I think
6 you know people on both sides; is that correct?

7 A. Yes, sir.

8 Q. So what we would be asking you if you are picked as
9 a juror, can you completely disregard the fact that you know
10 the Defendant; you knew some of the victims; disregard what
11 you have heard, come in the courtroom, listen to the evidence
12 and base your decision strictly on the evidence in court and
13 the law that the Judge gives you?

14 A. Yes, sir. I could.

15 Q. Okay. You wouldn't come in leaning one way or the
16 other. You would come in and listen to the evidence and base
17 your decision on that?

18 A. Yes, sir.

19 Q. And as the Judge has instructed you, you understand
20 that the burden of proof is on the State?

21 A. Yes, sir.

22 Q. At this phase in any trial, the defendant is
23 presumed innocent because we have put no proof on?

24 A. Yes, sir.

25 Q. And the burden is on the state. The defense
26 doesn't have to prove anything?

27 A. Yes, sir.

28 Q. And until such time as the state proves beyond a
29 reasonable doubt that he is guilty, then that presumption of

Individual Voir Dire - JURY OUT

innocence stays with him?

A. Yes, sir.

Q. Now the first phase is strictly guilt or innocence. Once we get past that phase, if the jury convicts, then we go into the second phase. And at the same time, I'm not going to go through the procedure, but what we are looking for is a jury that again, can come in with an open mind; can say okay, I'm going to listen to what the State puts on, because we will be putting on things attempting to show that the death penalty is appropriate. I can also listen to the Defense. They are going to be putting on things in mitigation to try to justify a life sentence at that point. And what we are trying to do is find a jury that is not going to lean one way or the other; who will come in and say okay, I'm going to listen to what the State says. I'm going to listen to what the Defense says. I'm going to listen to the Judge, and only after I listen to all of that, I will consider both sides, and then I will decide which penalty I think is appropriate. Could you do that?

A. Yes, sir.

BY MR. EVANS: Nothing further, Your Honor.

BY MR. DE GRUY: Thank you, Your Honor.

INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

Q. Mr. Halfacre, I believe you said you have formed an opinion on the case?

A. Yes, sir. I have.

Q. But you said that you could be persuaded by evidence?

A. Yes, sir, or lack of evidence.

Individual Voir Dire - JURY OUT

1 Q. And so what -- if you will just tell us, what is
2 your opinion at this point?

3 A. I think he is guilty.

4 Q. And can you tell us what you base that on?

5 A. On well, the previous two trials.

6 Q. Okay, so you know about these previous two trials?

7 A. Yes, sir.

8 Q. And based on that, you have formed an opinion that
9 he is guilty?

10 A. Yes, sir.

11 Q. And so at this point you would have to hear
12 something new from Mr. Flowers to change your mind?

13 A. Yes, sir, basically.

14 BY MR. DE GRUY: That's all I have, Your Honor.

15 BY THE COURT: You may step down, Mr. Halfacre.

16 BY THE JUROR: Thank you, sir.

17 (Juror 55, Mr. Halfacre leaves the courtroom.)

18 BY MR. CARTER: Move for cause.

19 BY MR. DE GRUY: We challenge for cause, Your
20 Honor.

21 BY THE COURT: Any objection?

22 BY MR. EVANS: Yes, sir. The State would object.
23 He said that he would be fair and impartial. He never
24 said he could not be fair and impartial. He said that
25 he could base, change his opinion on evidence or lack
26 of evidence.

27 BY THE COURT: But he must presume that the
28 Defendant is innocent until such time as the State
29 proves his guilt beyond a reasonable doubt, and he

Individual Voir Dire - JURY OUT

1 can't presume that if he starts out presuming that he
2 is guilty.

3 BY MR. EVANS: He said that he could.

4 BY THE COURT: Well, I am excusing him for cause.
5 Mr. Evans, you know that won't stand up. Okay, Ms.--
6 (To the Bailiff) Wait a minute; wait a minute, Holly.
7 Ms. McCollough has got the relative that is sick.
8 There is nobody to keep that relative but her. Have
9 y'all got any objection to me excusing her?

10 BY MR. DE GRUY: I have no objection.

11 BY MR. EVANS: None.

12 BY THE COURT: Okay, you can tell Ms. McCollough
13 she can go. Rickie Young.

14 (JUROR NO. 57, MR. RICKIE WENDELL YOUNG, enters the
15 courtroom.)

16 INDIVIDUAL VOIR DIRE BY THE COURT:

17 Q. State your name.

18 A. Rickie Young.

19 Q. Mr. Young, you ever heard anything about this case?

20 A. Yes.

21 Q. How did you hear about it?

22 A. On the news.

23 Q. Have you heard about it in the community talk,
24 street talk or gossip?

25 A. No.

26 Q. You haven't ever heard anybody talk about it at
27 all?

28 A. No, I really don't talk to nobody.

29 Q. Okay, well, they ever talk to you?

Individual Voir Dire - JURY OUT

1 A. No. I am kind of a loner.

2 Q. Did you know any of the victims in this case?

3 A. Yes.

4 Q. Who did you know?

5 A. I knew Ms. Bertha for years back. My mom and dad
6 used to deal with them.

7 Q. Okay. Do you know any of her family?

8 A. No.

9 Q. Okay. How about any of the other victims? Did you
10 know any of them?

11 A. Not really.

12 Q. Do you know Mr. Flowers?

13 A. I know him through, I used to go with one of his
14 cousins back years ago.

15 Q. Okay. How about his family; other than that
16 cousin, do you know--

17 A. I know his daddy.

18 Q. Okay. The one that works at Wal-Mart?

19 A. Right.

20 Q. Have you discussed this matter with any of them?

21 A. No.

22 Q. Mr. Young, based on what you have heard about this
23 case, have you formed an opinion as to the guilt or innocence
24 of Mr. Flowers?

25 A. Um, not really. I haven't really even thought
26 about it.

27 Q. Okay. If you were seated as a juror in this case,
28 could you listen to the evidence that comes from the witness
29 stand, get my instructions on the law at the end of the case,

Individual Voir Dire - JURY OUT

1 consult with your fellow jurors, and make a decision based on
2 that rather than what you might have heard outside of court
3 or to the exclusion of any relationships you might have with
4 anybody in this case?

5 A. Yeah.

6 Q. Okay. Do you know of any reason you couldn't be
7 fair and impartial?

8 A. When it comes down to the death penalty, I
9 couldn't.

10 Q. Okay, that is the next question I'm going to ask
11 you.

12 A. Okay.

13 Q. If we get to that point, then the jury will have
14 found beyond a reasonable doubt that Mr. Flowers is guilty of
15 this matter. Then we would go to the second phase where it
16 would just be, the penalty would be the only thing in
17 question, and that would be the death penalty or life. That
18 would be the only two options. At that point in time the
19 State would put on evidence of aggravating circumstances
20 which would tend to weigh toward the death penalty. The
21 Defendant would put on mitigating circumstances which would
22 tend to weigh toward life, and the jury then would get an
23 instruction from me setting forth those things and setting
24 forth how the jury should consider those things in reaching
25 their verdict. And then the jury would make up their mind at
26 that time as to what the penalty would be.

27 First, let me ask you; do you have a religious or
28 personal belief in opposition to the death penalty?

29 A. Yes.

Individual Voir Dire - JURY OUT

1 Q. Okay. If at the end of the trial I instructed you
2 that the law authorized the imposition of the death penalty
3 and you found from the evidence that the evidence warranted
4 the imposition of the death penalty, could you impose it?

5 A. No.

6 Q. Okay.

7 BY THE COURT: Mr. Evans.

8 BY MR. EVANS: Thank you, Your Honor.

9 BY THE COURT: Wait, wait, Mr. Young.

10 INDIVIDUAL VOIR DIRE BY MR. EVANS:

11 Q. Good evening, Mr. Young.

12 A. Okay. Oh, okay. Good evening.

13 Q. I have got just a few questions. Mr. Young, you do
14 know the Defendant Curtis Flowers?

15 A. Yeah.

16 Q. How long have you known him?

17 A. It has been a while. But, you know, I knew him a
18 long time. I was about 15 or 16 years old.

19 Q. So you have known him for a good many years?

20 A. Good many years.

21 Q. And you know most of his family?

22 A. Yes.

23 Q. Are you related to them in any way?

24 A. Not as I knows of.

25 Q. Just good friends?

26 A. Yeah.

27 Q. Who all do you know in his family?

28 A. I know his dad. I knew somewhat of his mom, you
29 know; I knew his mom. Then I knew him and his sisters and

Individual Voir Dire - JURY OUT

1 them. Like I say, I was going with one of their cousins.

2 Q. Who were you going with?

3 A. Jamie Flowers' daughter, Marie Flowers.

4 Q. All right, before I go any further, one thing I
5 want to cover with you on this. What we're attempting to do,
6 we are trying to find a jury that doesn't have any outside
7 influences one way or the other. And by that, I mean
8 connections with one side or the other or reasons they might
9 lean one way or the other in the case. The fact that he is
10 the person that is on trial here, if you were picked as a
11 juror on this case, because you know him, you're friends with
12 his family; you have dated a relative of his; don't you think
13 that that would be something that you would be thinking about
14 if you were on the jury?

15 A. Yeah.

16 Q. And again, everybody -- I think the Judge said this
17 this morning, but if he didn't, everybody can be fair jurors
18 on certain cases, but there are cases that they may not be
19 because of friendships and kinships and things like that.
20 Because you are friends with a lot of his family and because
21 you know him, on this particular case don't you think that
22 would keep you from being fair and impartial?

23 A. Yeah.

24 Q. Okay. And to follow up on the death penalty part,
25 the Judge has told you that this is a case where the death
26 penalty may be one of the two options. Now I understand from
27 what you are telling us that your views against the death
28 penalty are pretty strong?

29 A. Right.

Individual Voir Dire - JURY OUT

1 Q. And regardless of what the law was, what the Judge
2 told you the law was, even if the Judge told you that in this
3 case the death penalty was authorized and even if the facts
4 justified it, you could never vote for the death penalty
5 yourself, could you?

6 A. No.

7 BY MR. EVANS: Nothing further, Your Honor.

8 BY MR. DE GRUY: No questions, Your Honor.

9 BY THE COURT: You may step down, Mr. Young.

10 (Juror 57, Mr. Young leaves the courtroom.)

11 BY THE COURT: I'm going to strike him for cause.

12 Any objection?

13 BY MR. EVANS: No, sir.

14 BY MR. DE GRUY: No objection.

15 BY THE COURT: One thing I forgot to do. Let me
16 just go ahead and do it. I have got some for cause
17 right here for other reasons other than what I was
18 going to talk to you about. (To the Bailiff) I'm not
19 ready for her yet.

20 60, Mr. Williams, the highway patrolman; 61, Mr.
21 Gholston, the Montgomery County officer; and number
22 62, Mr. Avent, the Kilmichael policeman, all said they
23 couldn't be fair and impartial. I'm going to strike
24 them for cause. I assume there is no objection to
25 that, is it?

26 BY MR. EVANS: No, sir.

27 BY MR. DE GRUY: No objection.

28 BY THE COURT: Okay. Betty Jean Jamerson is, she
29 said she could not be fair and impartial, and I'm

Challenges for Cause - JURY OUT

1 going to strike her for cause. Any objection to that?

2 BY MR. EVANS: No, sir.

3 BY MR. DE GRUY: No objection.

4 BY THE COURT: Let's see. Benny Park, number 71,
5 said he could not sit in judgment of his fellow man,
6 so I'm going to excuse him for cause. I have got a
7 mark by Sherry Lancaster, and I forgot what she said.

8 BY MR. EVANS: I think it was related to a
9 business burglary.

10 BY THE COURT: Oh, yeah. She had the convenience
11 store at Duck Hill, and she said it had been
12 burglarized, and that would keep her from being fair
13 and impartial.

14 BY MR. EVANS: That's what she said.

15 BY THE COURT: I was going to strike her for
16 cause unless y'all have got any objection?

17 BY MR. DE GRUY: No objection.

18 BY THE COURT: Margie Vaughn doesn't like Mr.
19 Evans at all. (Laughter.)

20 BY MR. EVANS: She can join in with some other
21 people.

22 BY MR. CARTER: She is not alone.

23 BY THE COURT: And certainly said she couldn't be
24 fair and impartial, so I'm going to strike her for
25 cause. There again, Becky Ables. I forget--

26 BY MR. EVANS: -- Her father had been murdered.

27 BY THE COURT: Right, and she couldn't be fair
28 and impartial. Mr. Horn had some, it was a crime
29 related thing there too, wasn't it, where he said--

Challenges for Cause - JURY OUT

1 BY MR. EVANS: Auto thefts.

2 BY THE COURT: Well, it was something else.

3 BY MS. FERRARO: Mother was mugged.

4 BY MR. DE GRUY: His mother was mugged.

5 BY THE COURT: His mother was mugged, and he said
6 he couldn't be fair and impartial. Those two for
7 cause. No objection there; is that right?

8 BY MR. EVANS: No, sir.

9 BY THE COURT: Y'all have got to speak up too.

10 BY MR. DE GRUY: No objection.

11 BY THE COURT: Okay. And Sandra Shepherd on the
12 back row. Do y'all recall what she said?

13 BY MR. EVANS: Yes, sir. She said she was
14 related to Joel Hill, an officer, and that would
15 affect her.

16 BY THE COURT: Right. Any objection to striking
17 her?

18 BY MR. DE GRUY: No objection.

19 BY THE COURT: Okay. That gets us back to Edwin
20 Carter, Sr.

21 BY THE BAILIFF: Do you want to release those
22 others?

23 BY THE COURT: Yeah, they can. Have you got them
24 marked?

25 BY THE BAILIFF: Well, I will--

26 BY THE COURT: Just wait. Just wait just a
27 minute, and I will give them all to you. Come on,
28 Mr. Carter.

29 (JUROR NO. 58, MR. EDWIN GLEN CARTER, SR., enters

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1021-1170

VOLUME 15 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Individual Voir Dire - JURY OUT
the courtroom.)

INDIVIDUAL VOIR DIRE BY THE COURT:

Q. State your name, please, sir.

A. Edwin Carter.

Q. Mr. Carter, have you ever heard anything about this case?

A. Yes, sir.

Q. How did you hear about it?

A. I had a working relationship with one of the victim's fathers.

Q. Who was that?

A. Ms. Rigby.

Q. Ms. Rigby?

A. Yes, sir.

Q. Have you heard about it through the news media or anything like that?

A. Yes, sir.

Q. Did you hear about it through street talk or gossip?

A. Yes, sir.

Q. Have you ever heard about it from any of the family involved?

A. Yes, sir.

Q. Okay. Mr. Carter, based on what you have heard, have you formed an opinion as to the guilt or innocence of Mr. Flowers?

A. Yes, sir.

Q. Would that opinion keep you from being a fair and impartial juror for both sides?

FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY _____ D.C.

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Okay.

3 BY THE COURT: Mr. Evans?

4 BY MR. EVANS: No questions.

5 BY THE COURT: Mr. de Gruy?

6 BY MR. DE GRUY: No questions, Your Honor.

7 BY THE COURT: Thank you, sir. You may step

8 down.

9 (Juror 58, Mr. Carter leaves the courtroom and was
10 excused for cause though not verbally.)

11 BY MR. EVANS: Have we got another group?

12 BY THE COURT: This is it. For now.

13 BY MR. EVANS: Well, I mean you have already got
14 one more for later, haven't you?

15 BY THE COURT: What?

16 BY MR. EVANS: Haven't you got another group for
17 later?

18 BY THE COURT: Oh, no.

19 BY MR. DE GRUY: This is it.

20 BY THE COURT: This is it. Y'all need to quit
21 asking questions or I do one.

22 BY MR. EVANS: It's kind of hard to do.

23 BY MR. CARTER: I have been trying to stop you.

24 BY THE COURT: Mr. Carter, you have. I will give
25 you that. Bernice Seals.

26 (JUROR NO. 59, MS. BERNICE SEALS McMILLIAN, enters
27 the courtroom.)

28 BY THE COURT: Have a seat right there.

29 INDIVIDUAL VOIR DIRE BY THE COURT:

Individual Voir Dire - JURY OUT

1 Q. State your name, please, ma'am.

2 A. Bernice Seals McMillian.

3 Q. McMillian?

4 A. Uh-hum.

5 Q. Okay. Ms. Seals, I mean -- excuse me,

6 Ms. McMillian, have you ever heard anything about this case?

7 A. Yeah.

8 Q. How did you hear about it?

9 A. People talking.

10 Q. Just community talk, gossip and all?

11 A. Yes.

12 Q. Did you ever here about it through the news media?

13 A. (Juror shakes her head.)

14 Q. No television or radio or newspaper?

15 A. No.

16 Q. Okay. Did you know any of the victims in this
17 case?

18 A. No.

19 Q. Do you know any of their families?

20 A. (Juror shakes her head.)

21 Q. You have got to answer. She has got to--

22 A. Oh. No.

23 Q. Do you know Mr. Flowers?

24 A. Not personally. I just knew--

25 Q. -- know who he is?

26 A. Uh-hum.

27 Q. How about any of his family?

28 A. I know his father.

29 Q. Okay, how do you know his father?

Individual Voir Dire - JURY OUT

1 A. Just seeing him in Wal-Mart, and they look just
2 alike.

3 Q. Would you call yourself a personal friend of his,
4 or you just know who he is?

5 A. Just know who he is.

6 Q. What part of the county do you live in, Ms.
7 McMillian?

8 A. Over in Montgomery.

9 Q. Yeah, what part of Montgomery County do you live
10 in?

11 A. Kilmichael.

12 Q. Ms. McMillian, based on what you have heard, have
13 you formed an opinion as to the guilt or innocence of Mr.
14 Flowers?

15 A. No.

16 Q. Ms. McMillian, if you were seated as a juror in
17 this case, could you listen to the evidence that comes from
18 the witness stand, take my instructions on the law at the end
19 of the case, apply them to the facts as you see them, discuss
20 that with your fellow jurors, and then make your decision
21 based on what you heard here rather than what you may have
22 heard somewhere else or whatever relationships you might
23 have? Could you do that?

24 A. Yes.

25 Q. Do you know of any reason you could not be a fair
26 and impartial juror in this case?

27 A. No.

28 Q. In this case, Ms. McMillian, it could have two
29 phases. At the first phase the jury would have to determine

Individual Voir Dire - JURY OUT

1 beyond a reasonable doubt that the Defendant was guilty
2 before there could be a second phase. Do you understand
3 that?

4 A. Yes.

5 Q. If that happens, at that second phase the State
6 would put on additional evidence about aggravating
7 circumstances which would weigh toward the death penalty or
8 be on the side of the death penalty. The Defendant would put
9 on some evidence of mitigating circumstances that would lean
10 toward the imposition of the life sentence. Do you
11 understand that?

12 A. Yes.

13 Q. At the end of all that, I would give the jury an
14 instruction that would include all those factors, and it
15 would also state the procedure that the jury is to use in
16 determining what penalty to impose in this case. Do you
17 understand that?

18 A. Yes.

19 Q. Okay. Do you, Ms. McMillian -- you did not make
20 any statement of this while ago. Do you have any religious
21 or personal belief in opposition to the death penalty?

22 A. No.

23 Q. Okay. If at the end of the trial I instructed you
24 that the law would authorize the imposition of the death
25 penalty and after you heard the facts you decided that the
26 facts warranted the imposition of the death penalty, could
27 you impose the death penalty?

28 A. Yes.

29 Q. Okay.

Individual Voir Dire - JURY OUT

1 BY THE COURT: Mr. Evans.

2 BY MR. EVANS: Thank you, Your Honor.

3 INDIVIDUAL VOIR DIRE BY MR. EVANS:

4 Q. Good evening, Ms. McMillian.

5 A. Hi.

6 Q. Just a few questions I want to go over with you.

7 You say you do know the Defendant Curtis Flowers?

8 A. Yes.

9 Q. Tell me a little bit about how you know him.

10 A. Just by, you know, just by seeing him on TV.

11 That's all, you know.

12 Q. You don't know him in the community, didn't know
13 him in the community?

14 A. No. No. Because I live in Kilmichael and I guess
15 he is from over here.

16 Q. Okay. And you didn't go to school with him or any
17 of his brothers and sisters?

18 A. (Juror shakes her head.)

19 Q. How long have you known his father?

20 A. Well, recently, maybe about a year or two.

21 Q. Do you know his mother, Lola Flowers?

22 A. No.

23 Q. Of course, we haven't gone into any of this, but I
24 understand he has a lot of relatives around Montgomery
25 County, some in Kilmichael area. Some of the Flowers,
26 Campbells, different ones like that, do you know any of his
27 relatives?

28 A. No.

29 Q. Ms. McMillian, at this time from what you have

Individual Voir Dire - JURY OUT

1 heard about this case, do you have an opinion at this time as
2 to his guilt or innocence?

3 A. No.

4 Q. So nothing that you have heard has influenced you
5 to have an opinion one way or the other at this point?

6 A. No.

7 Q. If you were picked as a juror in this case, could
8 you listen to the evidence that came out in court, base your
9 decision on the evidence that came out in court as to his
10 guilt or innocence and not any outside influence?

11 A. Yes, I can do it.

12 Q. And could you be fair to both sides, both the
13 Defense and to the State in this case?

14 A. Yes.

15 Q. The Judge went over with you that this could be a
16 two phase trial. One of the penalties in this case can be
17 the death penalty. You do not have any beliefs against the
18 death penalty; is that right?

19 A. No, I don't have any belief.

20 Q. Against it?

21 A. Right.

22 Q. Okay, I just wanted to make sure. All right, in
23 this particular case at the end of the second phase -- well,
24 first, let me tell you this. The way the second phase would
25 go each side would put on evidence. We would be putting on
26 evidence to show--

27 **BY THE COURT:** -- Now I have explained all this
28 to her. She has already said she understood that. So
29 you just need to get to the point on it.

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** Your Honor, I am trying to, but I
2 would like to just make sure she understands that
3 point.

4 **BY THE COURT:** Well, she has answered
5 affirmatively she understands it. Let's move on to
6 the point.

7 **BY MR. EVANS:** Yes, sir.

8 **BY MR. EVANS:**

9 Q. In this particular case, if the Judge tells you
10 that the law authorized the death penalty and if the facts
11 justified it, could you yourself vote for the death penalty?

12 A. Yes.

13 Q. And the fact that you know him and know his father
14 wouldn't influence you in that decision?

15 A. No.

16 Q. You have served on a grand jury before; is that
17 correct?

18 A. Yes, felon court.

19 Q. Okay, ever on a trial jury or just a grand jury?

20 A. Well, I was on, you know, I served, you know, on
21 trial.

22 Q. On a trial?

23 A. Uh-hum.

24 Q. What kind of case was it?

25 A. It was a murder case.

26 Q. In this county?

27 A. Well, it was up in Oxford, Mississippi.

28 Q. Okay. How long ago was that?

29 A. It has been over ten years.

Individual Voir Dire - JURY OUT

1 Q. Did the jury reach a verdict in that case?

2 A. Yes.

3 Q. What was that verdict?

4 A. Guilty.

5 Q. Was that in state court or federal court?

6 A. It was federal.

7 Q. But were you living in Oxford at that time?

8 A. No.

9 Q. Okay, I was just trying to figure out if it was a
10 state trial or a federal trial.

11 A. All I know they sent me a thing in the mail and I
12 had to go. It was like three days.

13 BY MR. EVANS: Nothing further, Your Honor.

14 BY MR. DE GRUY: No questions, Your Honor.

15 BY THE COURT: You may step down, ma'am.

16 (Juror 59, Ms. McMillian leaves the courtroom.)

17 BY THE COURT: Any objection to her for cause?

18 BY MR. EVANS: No, sir.

19 BY MR. DE GRUY: No, Your Honor.

20 BY THE COURT: Judy Dees. (To the Bailiff) She
21 can go to the room.

22 BY MR. EVANS: I don't know what number that is.

23 BY MR. CARTER: What about 64?

24 BY THE CLERK: You skipped one, Judge.

25 BY MR. CARTER: 64.

26 BY THE COURT: Okay. Jacqueline Stewart.

27 (JUROR NO. 65, MS. JUDY PALMERTREE DEES, enters the
28 courtroom.)

29 BY THE COURT: Who is this?

Individual Voir Dire - JURY OUT

1 BY THE BAILIFF: Judy Dees.

2 BY THE COURT: Okay, let's just take her out of
3 order if that is all right. We are going to have to--

4 BY THE BAILIFF: --still have -- that's what I
5 was going to ask you.

6 BY THE COURT: Okay, I got messed up. Since she
7 is here, we are going to have to get to her anyhow.

8 BY THE BAILIFF: All right.

9 BY THE COURT: We will go ahead.

10 INDIVIDUAL VOIR DIRE BY THE COURT:

11 Q. Ms. Dees, would you state your name.

12 A. Judy Palmertree Dees.

13 Q. Ms. Dees, have you heard anything about this case?

14 A. Yes, sir.

15 Q. How did you hear about it?

16 A. It was just on the day that it happened, that there
17 had been murders that had occurred at Tardy's.

18 Q. That day, how did you hear it? Through word of
19 mouth?

20 A. Yes, sir. It was just floating around town. Just
21 different people were talking about some murders had
22 occurred. They didn't state, you know, they didn't know what
23 had happened.

24 Q. Okay. Have you heard about it much since then?

25 A. No, sir.

26 Q. Okay. Have you read about it or heard about it in
27 any way through the news media?

28 A. No, sir.

29 Q. Do you live in Winona?

Individual Voir Dire - JURY OUT

1 A. Yes, sir.

2 Q. Did you know any of the victims?

3 A. Carmen was a distant relative on my father's side,
4 but I didn't really know her personally. And I know BoBo's
5 stepmother Cindy. Other than that, I didn't know any of
6 them.

7 Q. Okay. Do you know any of the families? I realize
8 you are related to some of them, but I mean do you know them
9 very well?

10 A. Well, Cindy Stewart, I know her pretty well. Other
11 than that, that is the only one.

12 Q. Have you ever discussed this matter with any of
13 them?

14 A. No, sir.

15 Q. Have they ever discussed it with you?

16 A. No, sir.

17 Q. Okay. Do you know Mr. Flowers?

18 A. I know his face. I don't know him personally, but
19 I do know his sisters, both of his sisters.

20 Q. How is it that you know his face?

21 A. I saw him, he was in high school. He was grades
22 ahead of me in high school.

23 Q. Okay. And you know some of his sisters?

24 A. Yes, sir, and I also know his father.

25 Q. And how do you know his father?

26 A. Because he is a Wal-Mart associate, and so am I.

27 Q. Okay, you work at the same place he does?

28 A. Well, I work for the same company, not at the same
29 store.

Individual Voir Dire - JURY OUT

1 Q. Okay, which Wal-Mart do you--

2 A. I work in Grenada.

3 Q. Okay. Which sisters do you know?

4 A. Angela and Cora.

5 Q. Have you ever discussed this matter with any of
6 them?

7 A. No, sir.

8 Q. Have they ever discussed it with you?

9 A. No, sir.

10 Q. Ms. Dees, based on what you have heard and based on
11 your relationship with one of the victims, have you formed an
12 opinion as to the guilt or innocence of Mr. Flowers in this
13 case?

14 A. I have not.

15 Q. Ms. Dees, if you were seated as a juror, could you
16 listen to the evidence that comes from the witness stand,
17 take my instructions on the law at the end of the case, apply
18 them to the facts as you see them, discuss that with your
19 fellow jurors, and make your decision based on what happened
20 here in this courtroom as opposed to what you may have heard
21 and what relationships or kinships you might have?

22 A. Yes, sir.

23 Q. Do you know of any reason that you could not be
24 fair and impartial?

25 A. No, sir.

26 Q. Okay. This case could be a two part case. The
27 first part would be the part to determine whether or not
28 Mr. Flowers is guilty. In order for there to be a second
29 part, the jury must find at the first part unanimously beyond

Individual Voir Dire - JURY OUT

1 a reasonable doubt that he is guilty. Do you understand
2 that?

3 A. Yes, sir.

4 Q. If we get to that point, then the second part will
5 be just about penalty, and the only two penalties are death
6 and life. At that stage the State of Mississippi would put
7 on evidence of aggravating circumstances. That evidence
8 would be for the purpose of saying that the death penalty
9 should be imposed. After that, the Defendant would put on
10 some evidence, and that would be called mitigating
11 circumstances. And the purpose of that would be to show that
12 life should be the sentence imposed. Those things that the
13 Defendant could put on are not limited to things that
14 happened about this case. They could be things that happened
15 in his life about his childhood, his school work, his work,
16 and his family life and those kind of things. They are just
17 things tending to convince the jury that he ought to get life
18 rather than death. Do you understand that?

19 A. Yes, sir. I understand.

20 Q. Okay. At that point in time I'm going to give the
21 jury a written instruction that will list all of these
22 aggravating and mitigating factors, and it will also detail
23 the procedure that the jury is to follow in order to consider
24 these things and to reach a verdict as to those two options.
25 Do you understand that?

26 A. Yes, sir.

27 Q. Okay. Do you-- and you did not answer while ago,
28 but I'm going to ask it again. Do you have any religious or
29 personal beliefs against the imposition of the death penalty?

Individual Voir Dire - JURY OUT

1 A. No, sir.

2 Q. Okay. At the end of this trial if we get to the
3 point where that is the question, if I instruct the jury that
4 the law authorizes in this case the imposition of the death
5 penalty and you find from the facts that the facts warrant
6 the imposition of the death penalty, could you impose the
7 death penalty?

8 A. Yes, sir.

9 Q. Okay, if at that stage after you considered the
10 aggravating circumstances and the mitigating circumstances
11 and all the other evidence and the instructions that you
12 might get at that time, could you consider both options, or
13 would you automatically vote for the death penalty?

14 A. I would consider both options.

15 Q. Thank you, ma'am.

16 **BY THE COURT:** Mr. Evans.

17 **BY MR. EVANS:** Thank you.

18 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

19 Q. Good evening, Ms. Dees.

20 A. Hi.

21 Q. Ms. Dees, so that you will understand, what we are
22 attempting to do is try to come up with a jury that will not
23 let any outside influences enter into their decision, that
24 can strictly look at what comes out in the courtroom, what
25 evidence comes out here, and what law the Judge gives. And I
26 notice in your case you have got connections with both sides;
27 is that correct?

28 A. Yes, sir.

29 Q. You know some of the victims. You know some of

Individual Voir Dire - JURY OUT

1 their families?

2 A. Yes, sir.

3 Q. You also, I think, know the Defendant and some of
4 his family?

5 A. Yes, sir.

6 Q. Do you think any of that would enter into your
7 decision if you were picked as a juror on this case?

8 A. I do not.

9 Q. You think you could completely disregard that on
10 both sides?

11 A. I do.

12 Q. Also, you have stated earlier that you had a
13 brother and father that were prosecuted?

14 A. Yes, sir.

15 Q. Were both of those prosecuted here?

16 A. Yes, sir.

17 Q. So I guess I was the one or my office was the one
18 that handled that; is that right?

19 A. Yes, sir.

20 Q. When was that?

21 A. My father's was back five years ago. And my
22 brother's was two years ago.

23 Q. Okay, is there anything about the fact that I may
24 have prosecuted some of your family members that would enter
25 into your thought process in this case if you were picked as
26 a juror?

27 A. No, sir.

28 Q. And as far as on the victims' side, who all did you
29 say you knew on the victims' side?

Individual Voir Dire - JURY OUT

1 A. I know Cindy Stewart, and my father is distant, was
2 distantly related to Carmen Rigby.

3 Q. Okay, and you know Angela and Cora, two of the
4 Defendant's sisters?

5 A. Yes, sir.

6 Q. Do you know of any reason related to that at all
7 that would keep you from being fair and impartial?

8 A. No, sir.

9 Q. And as the Judge told you, this is a capital case?

10 A. Yes, sir.

11 Q. If we get to the second phase of it, one of the two
12 possible penalties will be the death penalty. Do you
13 understand the procedure the Judge has explained to you for
14 how the jury is to arrive at that death penalty?

15 A. Yes, sir.

16 Q. If you were picked as a juror and if you listened
17 to the evidence on both sides, what the State puts on and
18 what the Defense puts on; if the Judge tells you in this case
19 the death penalty is authorized by law and if the facts
20 justified it, could you vote for the death penalty?

21 A. Yes, sir.

22 **BY MR. EVANS:** Tender the witness-- juror.

23 **BY MR. DE GRUY:** Thank you, Your Honor.

24 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

25 Q. Good afternoon, Ms. Dees.

26 A. Hi.

27 Q. Your father and your brother, are they currently
28 incarcerated?

29 A. My brother is. My father is out on probation.

Individual Voir Dire - JURY OUT

1 Q. Do you visit your brother where he is incarcerated?

2 A. Yes, I do.

3 Q. And how is it that you know Ms. Stewart?

4 A. She and I went to school together.

5 Q. And have y'all kept up the friendship over the
6 years?

7 A. No, we have kind of lost contact. I see her once
8 in a while.

9 Q. Say how often do you see her?

10 A. Well, I mean that is just in passing. Maybe every
11 few months or so. That is just like I might see her at the
12 grocery store and speak and keep going or something like
13 that. We have never had a close friendship is what I'm
14 saying.

15 Q. Okay. Y'all aren't calling each other to make
16 lunch dates?

17 A. No.

18 Q. You just bump into each other?

19 A. Right.

20 Q. Did you say that y'all had ever had discussions
21 about this case?

22 A. No, we have not.

23 Q. Okay. Now Ms. Dees, you may have already
24 experienced this by now today, but jury service can be a
25 stressful thing on people, and I am looking at your answer on
26 the question about medical history and the answer you and
27 your daughter.

28 A. Uh-hum.

29 Q. Based on your history and you know how you are

Individual Voir Dire - JURY OUT

1 feeling today; going through a week or two of trial and
2 listening to testimony and then having to deliberate and
3 reach a decision at really two separate trials and two
4 separate decisions, do you think that you would be able to do
5 that?

6 A. Yes, sir. I do.

7 Q. And you understand we just don't want to put you in
8 a position that could harm you and could--

9 A. -- I understand.

10 Q. Okay. And you believe that you would be okay with
11 that?

12 A. Yes, sir.

13 Q. And something you are willing to put yourself
14 through?

15 A. Yes, sir.

16 Q. And we appreciate that. Now you said that you
17 could impose the death penalty. My question is would you be,
18 just in general in a capital murder case, which is a killing
19 during the commission of another offense such as a robbery,
20 would you say that you would be leaning towards the death
21 penalty, just finding a person guilty of capital murder?

22 A. No.

23 Q. You would wait until you heard additional evidence?

24 A. Yes.

25 BY MR. DE GRUY: That's all I have, Your Honor.

26 BY THE COURT: Okay, Ms. Dees, you may step down.

27 (Juror 65, Ms. Dees leaves the courtroom.)

28 BY THE COURT: Any objection to her?

29 (State's Counsel confer.)

Individual Voir Dire - JURY OUT

1 **BY MR. EVANS:** May we have just a minute, Your
2 Honor?

3 **BY MR. HILL:** Can Counsel, Your Honor, just a
4 second?

5 **BY THE COURT:** Yes.

6 (State's Counsel confer further and then with
7 Defense Counsel.)

8 **BY MR. EVANS:** May we approach the bench, Your
9 Honor?

10 **BY THE COURT:** Yes.

11 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
12 AUDIENCE AS FOLLOWS:)

13 **BY MR. EVANS:** Your Honor, I know the Court
14 hasn't read the questionnaire is what Defense Counsel
15 was going into. She has attempted suicide before.

16 **BY MR. HILL:** Suffers from depression. And we
17 are discussing the possibility that both sides may
18 just want to agree to a cause because of that. Even
19 though she has said that she--

20 **BY THE COURT:** -- She didn't look crazy to me.

21 **BY MR. EVANS:** Well, look at her questionnaire.

22 **BY MR. DE GRUY:** That was in the questionnaire I
23 was asking her about.

24 **BY THE COURT:** Well, what do y'all want to do?
25 Other than that, she qualifies.

26 **BY MR. HILL:** If we agree, both sides agree to
27 excuse her for cause, isn't that an adequate
28 resolution of this?

29 **BY MR. EVANS:** I just don't know that we--

Individual Voir Dire - JURY OUT

1 **BY THE COURT:** -- Well, I mean I don't know of
2 any judge ever forcing anybody to take one when they
3 both agreed. Y'all are running out of jurors.

4 **BY MR. DE GRUY:** Mr. Flowers says he wants to
5 keep her.

6 **BY THE COURT:** You want to keep her?

7 **BY THE DEFENDANT:** Yes.

8 **BY MR. DE GRUY:** Yeah, so we will.

9 **BY THE COURT:** Good for you.

10 **BY MR. EVANS:** Now we have skipped one, so the
11 numbering--

12 **BY THE COURT:** -- We are going back to Jacqueline
13 Frances Stewart.

14 **BY MR. EVANS:** And that one would be ahead of
15 this one if she is on there; is that right?

16 **BY THE COURT:** Oh, yeah. It would be the same
17 order, but this one-- we had to go this far anyhow.

18 **BY MR. EVANS:** Yes, sir.

19 END BENCH CONFERENCE.

20 **BY THE BAILIFF:** We are keeping her?

21 **BY THE COURT:** Yeah. Jacqueline Frances Stewart.

22 (JUROR NO. 64, MS. JACQUELINE FRANCES STEWART,
23 enters the courtroom.)

24 INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. State your name, please.

26 A. Jacqueline Stewart.

27 Q. Ms. Stewart, have you ever heard anything about
28 this case?

29 A. Yes.

Individual Voir Dire - JURY OUT

1 Q. How did you hear about it?

2 A. Well, I'm in the family.

3 Q. Oh, are you? Who are you kin to?

4 A. My husband and BoBo's daddy are first cousins.

5 Q. Okay. Well, let me just go, cut to the chase on
6 that then, Ms. Stewart. Because of that kinship and all, do
7 you feel, have you formed an opinion as to the guilt or
8 innocence of Mr. Flowers?

9 A. Yeah, I couldn't. I don't think I could sit on the
10 jury.

11 Q. You do not think you could be fair and impartial?

12 A. No.

13 BY THE COURT: Okay. Do y'all have any questions
14 of her?

15 BY MR. DE GRUY: No questions.

16 BY MR. EVANS: No, sir.

17 BY THE COURT: Thank you, Ms. Stewart.

18 (Juror 64, Ms. Stewart leaves the courtroom.)

19 BY THE COURT: Excused for cause. Any objection?

20 BY MR. EVANS: No, sir.

21 BY MR. DE GRUY: No, Your Honor.

22 BY THE COURT: Reba Blaylock.

23 (JUROR NO. 66, MS. REBA LANE BLAYLOCK, enters the
24 courtroom.)

25 INDIVIDUAL VOIR DIRE BY THE COURT:

26 Q. State your name, please.

27 A. Reba Blaylock.

28 Q. Ms. Blaylock, have you ever heard about this case?

29 A. I have.

Individual Voir Dire - JURY OUT

1 Q. How did you hear about it?

2 A. Newspaper.

3 Q. Okay, how about radio and television?

4 A. Yes.

5 Q. Okay, what about community talk, gossip and street
6 talk?

7 A. Oh, yeah.

8 Q. Did you know any of the victims?

9 A. No.

10 Q. Do you know any of their family?

11 A. No.

12 Q. Do you know Mr. Flowers?

13 A. No.

14 Q. Do you know any of his family?

15 A. Yes.

16 Q. Who do you know?

17 A. Mother and father.

18 Q. You know Archie Flowers and Lola Flowers; is that
19 right?

20 A. Uh-hum.

21 Q. How do you know them?

22 A. Just in the line of work that I do.

23 Q. And what is that, please, ma'am?

24 A. Banking.

25 Q. Oh, okay. They are customers of your bank?

26 A. Uh-hum.

27 Q. What do you do at that bank?

28 A. I am a note teller.

29 Q. Okay. I don't want to pry in their affairs too

Individual Voir Dire - JURY OUT

1 much, but I assume then you have handled some loans and stuff
2 for them; is that right?

3 A. Or other transactions.

4 Q. Transactions, okay. Have they ever discussed this
5 matter with you?

6 A. No.

7 Q. Ms. Blaylock, based on what you have heard, have
8 you formed an opinion as to the guilt or innocence of Mr.
9 Flowers?

10 A. No.

11 Q. If you were seated as a juror in this case, could
12 you listen to the evidence that comes from the witness stand,
13 take my instructions on the law that I would give you at the
14 end of the trial, apply them to the facts as you see them,
15 discuss those with your fellow jurors, and then arrive at a
16 decision based on those things rather than what you might
17 have heard outside this courtroom?

18 A. Yes.

19 Q. Do you know of any reason that you could not be
20 fair and impartial?

21 A. No.

22 Q. Okay. This case could have two phases. The first
23 phase, which we will have, will be the phase that determines
24 whether or not Mr. Flowers is guilty of this. At that point
25 the jury would have to find beyond a reasonable doubt
26 unanimously that he was guilty and return such a verdict for
27 us to go to the second phase. If we get to the second phase,
28 then the only issue will be whether -- the penalty that is
29 involved, and that can only be death or life. Do you

Individual Voir Dire - JURY OUT

understand that?

A. Uh-hum.

Q. At that stage of the trial, the State would put on evidence of aggravating circumstances, and those aggravating circumstances will tend to weigh in favor of the death penalty. The Defendant will put on mitigating circumstances, and those mitigating factors will be such things, not limited to this, but there will be such things as how he did in school or what his family life was like or what employment record he had and just generally what kind of person he is. And they would be put on and put into evidence for the purpose of swaying the jury to the penalty of life rather than death. Do you understand that that is the way this would work?

A. Yes.

Q. Okay. I would also at that time give the jury an instruction that listed all those factors and would state the procedure the jury would have to follow in considering those factors and reaching a verdict. Do you understand that?

A. Yes.

Q. Okay. You did not -- when I asked this question while ago, you did not state that you had any opposition to the death penalty, but let me ask it again. Do you have any religious or personal belief that would be in opposition to the death penalty?

A. No.

Q. If at the end of the sentencing phase of the trial, I instructed you that the law authorized the imposition of the death penalty and you found from the facts that the

Individual Voir Dire - JURY OUT

1 evidence warranted the imposition of the death penalty, could
2 you impose it?

3 A. No.

4 Q. You could not personally do that; is that correct?
5 Is that what you are telling me?

6 A. Yes, I probably -- yes, I could.

7 Q. You think you could do it?

8 A. I could.

9 Q. Okay.

10 A. I could.

11 Q. Also, at that stage after you had examined the
12 aggravating -- I mean considered the aggravating factors and
13 the mitigating factors and all the other evidence that would
14 come in at that sentencing phase and any instructions that I
15 had on the law, you would have two options. Could you
16 consider both the life option and the death option, or would
17 you just disregard the life part of that and vote
18 automatically for the death penalty?

19 A. I would have to consider both.

20 **BY THE COURT:** Okay. Thank you, ma'am.

21 **INDIVIDUAL VOIR DIRE BY MR. EVANS:**

22 Q. Good evening, Ms. Blaylock.

23 A. Hi.

24 Q. There are a couple of things I want to go in with
25 you. As far as the first phase of the trial, what we are
26 attempting to do is get a jury that can disregard anything
27 that they may have heard outside of the courtroom, come in,
28 sit as a juror, listen to the evidence and base their
29 decision of guilt or innocence on nothing except what they

Individual Voir Dire - JURY OUT

1 hear in the courtroom and the law the Judge gives. Could you
2 do that?

3 A. Yes.

4 Q. That would be the first phase. In the second phase
5 the Judge has gone through the procedure that we would use.
6 Once each side has put on what evidence they want to in
7 aggravation and mitigation, what I would like to know from
8 you at this point, would you be leaning toward one answer or
9 the other - death penalty or life - or could you listen to
10 both sides, listen to what we put on and what the Defense
11 puts on and decide at that point whether or not this case
12 justified the death penalty or whether it justified life?

13 A. I could listen to both.

14 Q. Okay, so you wouldn't automatically vote for the
15 life sentence any more than you would automatically vote for
16 the death penalty?

17 A. No.

18 Q. I take it from your answers, you are not crazy
19 about the death penalty, but you think in the right
20 circumstance you could do it?

21 A. Right.

22 (State's Counsel confer briefly.)

23 Q. Ms. Blaylock, I think you said earlier that you
24 have a brother-in-law that was prosecuted, and that was for a
25 murder?

26 A. Uh-huh. It was.

27 Q. Where was that?

28 A. Here in Winona.

29 Q. How long ago?

Individual Voir Dire - JURY OUT

1 A. Nine years.

2 Q. Okay. Is there anything about that fact that would
3 enter into your decision either as to the guilt phase or the
4 sentencing phase if you were picked as a juror on this case?

5 A. No, it's not.

6 Q. And on the death penalty issue, if after hearing
7 both sides, if the Judge tells you in his instructions that
8 the death penalty is an appropriate penalty; it is authorized
9 in this case and if the facts justified it, could you
10 yourself vote for the death penalty?

11 A. Yes, I could.

12 BY MR. EVANS: Nothing further, Your Honor.

13 BY MR. DE GRUY: Thank you.

14 INDIVIDUAL VOIR DIRE BY MR. DE GRUY:

15 Q. Ms. Blaylock, have you ever visited with your
16 brother-in-law at Parchman?

17 A. Once.

18 Q. And you also said that your father was murdered
19 when you were a child?

20 A. Right.

21 Q. Do you know whether or not anyone was ever
22 prosecuted for that?

23 A. I don't know any of the details.

24 Q. Okay. You were a baby?

25 A. (Juror nods her head.)

26 Q. And I assume you never discussed in your family?

27 A. No.

28 Q. And so I assume based on your answers, that that
29 is -- you don't think that would have any effect on you. You

Individual Voir Dire - JURY OUT

really don't know anything about it?

A. That's right.

BY MR. DE GRUY: I have no more questions.

BY THE COURT: Thank you, Ms. Blaylock. You may step down.

(Juror 66, Ms. Blaylock leaves the courtroom.)

BY THE COURT: Any objection to her?

BY MR. EVANS: No, sir.

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: Okay. According to my calculations, that is nine. Let me go over what I have got with y'all and make sure we are on the same page. I retract that remark. I have on this panel Phillip, number 44 on the list, Phillip Cross, Jr.; 46, Rosa Lynn Alford; 48, Josephine Powell; 49, Jackie Austin; 50, Sherry Richardson; 52, Ms. Young; 59, Ms. McMillian; 65, Ms. Dees; and 66, Ms. Blaylock.

BY MR. EVANS: I am missing one. Just one second, Your Honor.

BY THE COURT: Probably missing Mr. Cross.

BY MR. EVANS: Okay, I didn't write the last name down.

BY THE COURT: Okay, before y'all go and deliberate on this, let me talk to y'all just a second. This is off the record.

(Counsel approached the bench for a conference off the record.)

BY THE COURT: Just tell the others just to sit tight for the time being. Okay, we will be in recess

Selection of jury alternates - JURY OUT
for a few minutes.

(FOLLOWING A RECESS FOR COUNSEL TO CONFER, ALL
COUNSEL AND THE DEFENDANT AGAIN APPEARED IN OPEN COURT WITH
THE JURY AND THE JURY PANEL MEMBERS ALL OUT FOR THE SELECTION
OF THE REMAINDER OF THE JURY AS FOLLOWS:)

BY THE COURT: I guess the process is you tender
me three; right?

BY MR. EVANS: Yes, sir. I guess so. Your
Honor, the first one according to my list that we come
to is what I have got as 37 which would be Phillip
Cross. We would tender him. The next one I have got
is Rosa Lynn Alford. I am getting my lists all mixed
up. Tender Ms. Alford. The next one that I have got
is what I would call 39; it was 49 on that list.

BY THE COURT: It's Josephine Powell.

BY MR. EVANS: Yes, Ms. Josephine Powell. That
would be S-1 or however.

BY THE COURT: S-A1.

BY MR. EVANS: S-1A.

BY THE COURT: S-A1.

BY MR. EVANS: S-A1. We tender 40.

BY THE COURT: Okay, you--

BY MR. EVANS: --And would the Court--

BY THE COURT: --renew your Batson--

BY MR. EVANS: --that is what I was fixing to
ask.

BY THE COURT: Well, I don't think he has to
renew it. I think he has made it. And let the record
reflect out of -- we have gone through four of those

Selection of jury alternates - JURY OUT

1 jurors, and four of them -- well, let me just put for
2 the record. The first one, Mr. Cross, is a white
3 male. Ms. Alford is a white female. Ms. Powell is a
4 black female, and Mr. Austin is a white male. So I
5 have already ruled that he has established a prima
6 facie case earlier, so go ahead and give me a race
7 neutral reason.

8 **BY MR. EVANS:** Yes, Your Honor. She stated at
9 one point that she would just vote for life. She also
10 did not answer the questionnaire as far as the death
11 penalty. She stated specifically that she didn't know
12 if she could ever vote for the death penalty. She
13 knows the Defendant. She knew him years ago. She
14 knows the Defendant's mother.

15 **BY THE COURT:** Mr. de Gruy?

16 **BY MR. DE GRUY:** In rebuttal, Your Honor, on the
17 questionnaire, this panel was summonsed by phone
18 yesterday afternoon, and they were filling out the
19 questionnaires this morning as we were collecting
20 them. So it may have just simply been inadvertent
21 that she didn't get finished with the questionnaire.
22 Her position on the death penalty is similar to
23 Holifield and Collins that we discussed yesterday,
24 both white jurors. And while she said she knew
25 Mr. and Ms. Flowers, she also knew Ms. Tardy.

26 **BY THE COURT:** Okay. The Court finds that when
27 she took the stand in this voir dire period, her
28 answers were so equivocating and unclear and went back
29 and forth to justify a peremptory challenge on there

Selection of jury alternates - JURY OUT

1 that would be race neutral based on the way she
2 testified. And therefore, I rule that it was, that
3 this is a race neutral strike. She did have some
4 contacts with the family and all too. But I find that
5 it is a race neutral challenge and meets Batson, and
6 it is not pretextual. Okay. That tenders three to
7 you, Mr. de Gruy.

8 **BY MR. DE GRUY:** The first alternate strike on
9 Phillip Cross. It is number 44 on the list I am
10 looking at.

11 **BY THE COURT:** Yes, that's what is on mine. That
12 is DA-1.

13 **BY MR. DE GRUY:** DA-2 will be Rosa Lynn Alford,
14 number 46. DA-3 will be number 49, Jackie Austin.

15 **BY THE COURT:** What do you say to Ms. Richardson?

16 **BY MR. EVANS:** Tender Ms. Richardson. Number 52
17 on that particular list will be SA-1.

18 **BY THE COURT:** No.

19 **BY MR. EVANS:** I mean SA-2; I'm sorry. There
20 is -- where to start. She was extremely evasive in
21 everything that she did say. Her father is Ira
22 Blueitt that I just got through prosecuting for the
23 same timber theft that one of the other jurors in this
24 case was associated with. Her uncle--

25 **BY THE COURT:** -- That was her father?

26 **BY MR. EVANS:** That was her father.

27 **BY THE COURT:** Where did that occur?

28 **BY MR. EVANS:** Here. Just, I think about a term
29 ago which is partially still ongoing, a term or two.

Selection of jury alternates - JURY OUT

1 **BY THE COURT:** It might have been me as the
2 Judge.

3 **BY MR. EVANS:** It could, probably was.

4 **BY THE COURT:** Yeah.

5 **BY MR. EVANS:** Her uncle is Andrew Witty. That
6 is an old case but I prosecuted it. I was assistant
7 DA at the time that that was prosecuted. And it was a
8 murder case. Also, because of the things that have
9 been going on during this voir dire, it is expressly
10 bothers me that somebody pointed out to her after she
11 came up here on jury duty who the Defendant's father
12 was.

13 **BY THE COURT:** I'm going to disregard that part
14 of it. I don't think that is significant at all. Is
15 that all you have got?

16 **BY MR. EVANS:** I'm looking, Your Honor. I think
17 it is.

18 **BY THE COURT:** All right, rebuttal?

19 **BY MR. DE GRUY:** Your Honor, as far as her father
20 being prosecuted, there was no -- he didn't ask her a
21 single question about her father. In fact, had her
22 father confused as the earlier murder prosecution.
23 And she was clear, asked about her uncle, and she said
24 it wouldn't be a problem. The fact that he didn't ask
25 her about any situation her father was in or whether
26 or not she even knew about it, I think is indicative
27 of prima facie reasons.

28 **BY THE COURT:** Well, if that is, in fact, true,
29 that she, that that is her father that was prosecuted,

Selection of jury alternates - JURY OUT

1 she failed to answer my question when I asked if any
2 family member had been charged with a crime.

3 BY MR. EVANS: Your Honor, her questionnaire is
4 already in evidence because the Court has ordered --

5 BY THE COURT: --yes--

6 BY MR. EVANS: --all those to be held. It shows
7 her father is Ira C. Blueitt. And I have a copy of
8 his commitment papers and all if the Court would like
9 for me to put them in the file.

10 BY THE COURT: Yeah, I would.

11 BY MR. EVANS: There is no need in putting
12 another questionnaire.

13 BY THE COURT: No.

14 (NOTICE OF CRIMINAL DISPOSITION ON IRA BLUEITT WAS
15 MARKED AND RECEIVED IN EVIDENCE TO THE BATSON HEARING DURING
16 JURY SELECTION AS STATE'S EXHIBIT "B.")

17 BY THE COURT: Based on that, I find that that is
18 a race neutral reason and meets the test of Batson and
19 is not a pretextual strike. Okay, let's see. That
20 puts us-- that is two? No, it's not.

21 BY MR. EVANS: That is just one so far.

22 BY THE COURT: One, okay.

23 BY MR. EVANS: Hold on just a second. Let me
24 make sure I know where we are. Bernice Seals
25 McMillian will be SA-3. Your Honor, the Court will
26 note that she said that the only thing she knew about
27 the Defendant was from seeing his picture in the news.
28 The only way she knew any family members, she knew who
29 his father was at Wal-Mart. She was not related to

Selection of jury alternates - JURY OUT

1 any of the Campbells. She was not related to any of
2 the Forrests. Her father is Scratch Seals. He is
3 deceased. He had a beer joint in Kilmichael that is
4 still operated by her uncle and his wife, Archie
5 Campbell, who is a direct relative that was on this
6 jury panel that was excused because he said he was a
7 relative and couldn't be fair and impartial.

8 **BY THE COURT:** Is that information in the
9 questionnaire?

10 **BY MR. EVANS:** No, sir.

11 **BY THE COURT:** Where did you get that?

12 **BY MR. EVANS:** From the Sheriff and about 15
13 other folks in the Kilmichael area.

14 **BY THE COURT:** Okay.

15 **BY MR. EVANS:** She has, her sister is Julia
16 Campbell that is married to Archie Campbell, which is
17 expressly different than what she told the Court and
18 told me. She has a brother named Larry Seals that was
19 prosecuted in this county by this Sheriff's Department
20 and by this office for robbery, and he sued the county
21 and the Sheriff's Department in federal court after
22 being convicted.

23 **BY THE COURT:** That is her brother?

24 **BY MR. EVANS:** Yes, sir.

25 **BY THE COURT:** Okay.

26 **BY MR. DE GRUY:** Your Honor, again she was here
27 to testify, and all these questions could have been
28 asked of her, and we don't know whether or not she has
29 any relation to these people at all. There has been

Selection of jury alternates - JURY OUT

1 no evidence that she is even related to these people.

2 BY THE COURT: Well, he is stating that as an
3 officer of the Court. And I assume that he is not
4 perjuring himself.

5 BY MR. DE GRUY: He is stating that he has
6 hearsay information.

7 BY THE COURT: Not as to who her brother would
8 be. Well, it might be. That would be hearsay. Do
9 you dispute that? Because if that is true, she didn't
10 answer the question either when I asked her if she had
11 any relatives charged with a crime.

12 BY MR. DE GRUY: I have no idea one way or the
13 other.

14 BY THE COURT: Well, y'all want to put her back
15 on and ask her?

16 BY MR. DE GRUY: I think that would be the
17 State's burden.

18 BY MR. EVANS: I don't think it's our burden, but
19 I don't have a problem with it.

20 BY THE COURT: Well, it would complete the
21 record. Where is she? Bernice Seals McMillian.

22 (The Bailiff leaves the courtroom to get the juror
23 in question.)

24 BY THE COURT: What is her brother's name?

25 BY MR. EVANS: Larry.

26 BY THE COURT: Seals?

27 BY MR. EVANS: Yes, sir.

28 BY THE COURT: And he has been convicted?

29 BY MR. EVANS: Yes, sir, of robbery.

Further Voir Dire of Bernice McMillian - JURY OUT

(JUROR NO. 59, MS. BERNICE SEALS MCMILLIAN, enters the courtroom.)

BY THE COURT: Have a seat right there, Ms.

McMillian. Right over there.

ADDITIONAL VOIR DIRE BY THE COURT:

Q. Ms. McMillian, is Larry Seals your brother?

A. Yes.

Q. Is he the Larry Seals that was convicted of robbery here last year?

A. Yes.

Q. Thank you, ma'am.

BY THE COURT: Unless y'all have any questions?

BY MR. DE GRUY: I have no questions.

BY MR. EVANS: No, sir.

(Juror 59, Ms. McMillian leaves the courtroom.)

BY THE COURT: Which means her answer to my question was incorrect, and it also establishes a race neutral reason for excluding her as not a pretextual reason. Therefore, the peremptory challenge is all right. That brings, that puts Ms. Dees on, doesn't it? You are out.

BY MR. EVANS: Yes, sir. It does.

BY THE COURT: Okay, I show then, let's see.

BY MR. DE GRUY: Your Honor, before we close the book on the Batson issue, for the record.

BY THE COURT: --Wait a minute; I have lost something somewhere. Who have I got on here?

BY MR. EVANS: Dees and Blaylock are left, and there are no strikes.

Further selection of alternates - JURY OUT

1 **BY THE COURT:** Oh, yeah, okay. That's right.

2 Yes, sir. Go ahead.

3 **BY MR. DE GRUY:** Okay. The State has accepted
4 Richardson who worked at KI. And the State used that
5 as an excuse yesterday. Having worked at this place
6 where Mr. Flowers' sister worked was purported to be a
7 race neutral reason; and again yesterday used as a
8 justification a family member convicted of a crime,
9 and has accepted today as alternates Cross and Austin,
10 who both have family members who are convicted of a
11 crime. In fact, Mr. Cross' brother was convicted by
12 this District Attorney's Office and is now in the
13 penitentiary.

14 **BY MR. EVANS:** Briefly in response, Your Honor,
15 as far as that, I'm having to look at the ones that I
16 have got to strike on here. Like Ms. Richardson, she
17 said she worked one or two months at KI. Nothing in
18 there that would show any connection. She is 64 years
19 old. There is nothing in there that would show any
20 connection with her and the family. I had no choice
21 but to get Young and McMillian because they have lied
22 to the Court, to me and to everybody else in this
23 case. There is nothing in the record that would show
24 any type of impartiality on anybody that we have
25 struck.

26 **BY THE COURT:** Well, you have to, in considering
27 whether it's race neutral, you have to consider all
28 the factors. There are some differences between these
29 that he struck today and those that he struck the

Further selection of alternates - JURY OUT

1 other day like as to -- like when he took Mr. Cross,
2 Mr. Cross is a reserve officer. That certainly would
3 weigh toward taking.

4 **BY MR. EVANS:** For the record, Mr. Cross also
5 knew and was friends with BoBo also, Your Honor.

6 **BY THE COURT:** All right. Ms. Richardson's
7 testimony was while she worked at that place, she did
8 not work there long, and she indicated that she really
9 didn't have much communication with anybody in the
10 county, much less the people that worked there. And
11 let's see.

12 **BY MR. EVANS:** I think that was all.

13 **BY THE COURT:** Yeah, because the others were
14 tendered as a matter of course since you were out.
15 Isn't that right?

16 **BY MR. EVANS:** Yes, sir.

17 **BY THE COURT:** All right, the Court finds that
18 the Batson test has been met, that the exercise of
19 peremptory challenges by the State has not been
20 pretextual to mask a discriminatory manner in which
21 they were used. And therefore, we now have a jury.
22 Let's make sure we have all got the same people. Let
23 the record reflect that Sherry Ann Richardson is
24 alternate number 1. Judy Palmertree Dees is alternate
25 number 2. Reba Lane Blaylock is alternate number 3.
26 Due to the fact that the Court of necessity had to
27 excuse Stanley Booker earlier in the day, Sherry Ann
28 Richardson is seated as a member of the jury, and
29 Ms. Dees and Ms. Blaylock are now the two alternates.

Rest of jury panel seated

1 Okay. Let me see y'all up here a minute. This
2 doesn't need to be on the record. It's just
3 procedure. It's five after 4:00.

4 (The Court conferred with Counsel off the record.)

5 **BY THE COURT:** Before I do anything, let's go
6 make me a real jury list. Okay, Julie? I need a real
7 list.

8 **BY MR. EVANS:** Judge, some of these jurors have
9 still got to have another oath too.

10 **BY THE COURT:** Yes, they do. Here is what-- the
11 ones y'all have in the extra room, the ones we have
12 just been doing, bring them in.

13 (JURORS WHO HAD JUST BEEN THROUGH INDIVIDUAL VOIR
14 DIRE ENTERED THE COURTROOM AND STOOD IN FRONT OF THE BENCH.)

15 **BY THE COURT:** Ms. Dees, if you would have a seat
16 over there. And Ms. Blaylock, if you will have a seat
17 over there. And Ms. Richardson, have a seat in the
18 jury box, please. Is that all of them?

19 **BY THE SHERIFF:** No, sir. There is one in the
20 rest room.

21 **BY THE COURT:** I won't keep y'all up here. Y'all
22 have not been selected to serve on this jury, and
23 therefore I'm going to excuse you. And I excuse you
24 with the appreciation of the Court for your
25 willingness to be here on short notice and help us
26 move this case along, but you are free to go.

27 (NON-SELECTED JURORS LEAVE THE COURTROOM.)

28 **BY THE COURT:** While we are waiting, you can go
29 ahead and swear them in. Y'all have been chosen as

Rest of jury panel seated

1 members of this jury. There is an oath that you have
2 to take. If you would stand.

3 **BY THE SHERIFF:** One more.

4 (Other non-selected juror enters the courtroom.)

5 **BY THE COURT:** Okay, go ahead while I'm doing
6 this.

7 **BY THE CLERK:** Y'all stand and raise your right
8 hand. You and each of you do solemnly swear or affirm
9 that you will well and truly try the issue between the
10 State of Mississippi and Curtis Giovanni Flowers and a
11 true verdict give according to the law and evidence,
12 so help you God?

13 **BY THE JURORS:** I do.

14 **BY THE COURT:** Y'all can just be seated. Did
15 y'all bring your clothes?

16 **BY THE JUROR:** I did.

17 **BY THE JUROR:** I didn't.

18 **BY THE COURT:** Okay, you did? How about you,
19 Ms. Richardson?

20 **BY THE JUROR:** Yes, sir.

21 **BY THE COURT:** Okay. And Ms. Blaylock, you
22 didn't? Okay, we are going -- the bailiffs are going
23 to make, we will make some arrangements for you to get
24 them.

25 **BY THE SHERIFF:** Here is one more.

26 **BY THE COURT:** Ms. Young, you have not been
27 chosen as a member of this jury. Therefore, you are
28 released with the thanks of the Court.

29 (Ms. Young, juror 52, leaves the courtroom.)

Instructions to jurors for the night

1 **BY THE COURT:** I haven't probably explained this
2 too well to y'all, but of course, you will be
3 sequestered with the other nine jurors that we have
4 already picked, and they will join you here shortly.
5 You will be staying in Grenada at the Holiday Inn.
6 The bailiffs will stay there with you. You will eat
7 together. You will come back and forth together. We
8 will -- since you are not going to have unfortunately
9 any television in your room nor any phones or anything
10 like that. And we are going, and for that reason we
11 are going to work into Saturday, and we will work
12 Saturday so y'all will have something to do rather
13 than just sit around a motel room. You are neither
14 now or when you get with the other jurors are you to
15 discuss this matter amongst yourselves, nor are you to
16 form any opinions about this matter because you have
17 not heard any evidence at all, and you can't form any
18 opinions until such time as I give the case to you and
19 you have a chance to see my instructions on the law
20 and consult with your fellow jurors.

21 The bailiffs, we are going to have four bailiffs.
22 We will have two working with you at night and two in
23 the daytime. They are there to help you. If you need
24 anything, you let them know. There are going to be
25 certain restrictions about things that you can or
26 cannot do, but they know what they are. You cannot
27 discuss this case with the bailiffs. They are there
28 to wait on your needs and to get you back and forth,
29 but they are not there to assist you in the decision

Instructions to jurors for the night

1 in this case. So do not talk to them about the case.
2 Do you have cell phones?

3 (Two jurors respond in the affirmative.)

4 **BY THE COURT:** Let's see. Ms. Richardson, are
5 you here in a vehicle?

6 **BY THE JUROR:** Yes, sir.

7 **BY THE COURT:** Is there anybody that can come get
8 that vehicle?

9 **BY THE JUROR:** No, sir.

10 **BY THE COURT:** Sheriff, can we take care of her
11 vehicle?

12 **BY THE SHERIFF:** Put it out here where the rest
13 of them are.

14 **BY A DEPUTY:** If she would like us to drive it,
15 we can drive it home.

16 **BY THE COURT:** Would you like for them to do
17 that?

18 **BY THE JUROR:** You can do that or --

19 **BY A DEPUTY:** Katherine come get it for you?

20 **BY THE JUROR:** Yeah.

21 **BY THE BAILIFF:** I can bring her over here.

22 **BY THE COURT:** Okay. If you will, if you will
23 leave your cell phone in it too.

24 **BY THE JUROR:** It's in there now.

25 **BY THE COURT:** Okay. Ms. Blaylock, are you here
26 in your vehicle?

27 **BY THE JUROR:** I am.

28 **BY THE COURT:** Is there somebody that can come
29 get that?

Instructions to jurors for the night

1 **BY THE JUROR:** Yes.

2 **BY THE COURT:** We will make those arrangements,
3 and just leave your cell phone in it. And Ms. Dees,
4 the same thing. Okay. You can let them go. You can
5 bring the rest of the jurors in and seat them in here
6 so I can give them some instructions too. And y'all,
7 if you will, just relax a few minutes. I have got to
8 make a list as to who is on the jury, and then we are
9 going to let you go for the day. And we are going to
10 start the testimony in the morning.

11 (THE COURT REPORTER LEFT THE COURTROOM AT THE
12 INSTRUCTIONS OF THE COURT TO ASSIST WITH THE PREPARATION OF
13 THE LIST OF THE PEOPLE SELECTED ON THE JURY. WHILE SHE WAS
14 GONE, THE COURT GAVE THE ENTIRE JURY FURTHER INSTRUCTIONS FOR
15 THE NIGHT AND SENT THEM TO THE MOTEL WITH THE BAILIFFS.)

16 COURT WAS RECESSED FOR THE DAY ON 2/5/04 AT 4:15 PM.

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2/06/04 - Preliminary Matters

1 (ON FEBRUARY 6, 2004, COURT WAS DULY OPENED WITH
2 ALL COUNSEL AND THE DEFENDANT PRESENT. PRIOR TO TRIAL, THE
3 COURT REPORTER PRE-MARKED STATE'S EXHIBITS S-1 THROUGH S-116
4 FOR IDENTIFICATION, AND A TYPEWRITTEN LIST WAS PREPARED AND
5 DISTRIBUTED TO ALL COUNSEL AND TO THE COURT. THE EXHIBIT
6 LIST IS INCLUDED AS A PART OF THIS RECORD. EXHIBITS S-76,
7 S-77 AND S-78 FOR IDENTIFICATION WERE NOT ACTUALLY MARKED BUT
8 ONLY LABELS MADE IN ANTICIPATION OF PUTTING THEM ON EVIDENCE
9 TO BE PRODUCED AT TRIAL. HOWEVER, THAT EVIDENCE WAS MARKED
10 AT TRIAL WITH DIFFERENT EXHIBIT NUMBERS, SO EXHIBITS S-76
11 THROUGH S-78 WERE WITHDRAWN. SEVERAL OTHER PRE-MARKED ITEMS
12 THAT WERE NEVER REFERRED TO WERE ALSO WITHDRAWN.)

13 BY THE COURT: I'm ready for the jury.

14 JURY ENTERS THE COURTROOM.

15 BY THE COURT: Have we got note pads for them?

16 BY THE CLERK: We will get some.

17 BY THE COURT: Okay. And I need pens. Ladies
18 and gentlemen, courts in Mississippi now authorize
19 jurors to take notes during a trial. That used not to
20 be the case, but the rules changed about a year ago.
21 There are limitations on what you can do with those
22 notes, and I'm going to give you an instruction now
23 about that. And then I will give you an instruction
24 at the end of the trial also about that. They will
25 here just shortly before we take any testimony, will
26 deliver you some pads and pens so that you can take
27 these notes. Here is the instruction, the preliminary
28 instruction I will give you about that.

29 "If you would like to do so, you may take notes

2/06/04 - Preliminary Matters

1 during the course of the trial. On the other hand,
2 you are not required to take notes if you prefer not
3 to do so. Each of you should make your own decision
4 about this. If you decide to take notes, be careful
5 not to get so involved in note taking that you become
6 distracted from the ongoing proceedings.

7 Notes are only a memory aid and a juror's notes
8 may be used only as an aid to refresh that particular
9 juror's memory and assist that juror in recalling the
10 actual testimony. Each of you must rely on your own
11 independent recollection of the proceedings. Whether
12 you take notes or not, each of you must form and
13 express your own opinion as to the facts of this case.
14 An individual juror's notes may be used by that juror
15 only and may not be shown to or shared with other
16 jurors.

17 You will notice that we do have an official court
18 reporter making a record of the trial; however, we
19 will not have typewritten transcripts of this record
20 available for your use in reaching a decision in this
21 case."

22 (NOTE PADS WERE DISTRIBUTED TO THE JURORS.)

23 **BY THE COURT:** Ms. Julie, this needs to be marked
24 filed and be placed in the file. Let's have all the
25 witnesses that are here come around and be sworn.

26 (Several witnesses come forward.)

27 **BY THE COURT:** Is the rule invoked?

28 **BY MR. EVANS:** Yes, Your Honor.

29 **BY MR. CARTER:** Yes, sir.

2/06/04 - Preliminary Matters

1 **BY THE COURT:** How about y'all's witnesses? Have
2 you got any witnesses you want sworn?

3 **BY MR. CARTER:** I don't think there are any here
4 right now.

5 **BY MR. DE GRUY:** They are not here yet.

6 **BY THE COURT:** Okay. You all are responsible for
7 the rule; okay?

8 **BY MR. DE GRUY:** Yes, sir.

9 (APPROXIMATELY TWELVE WITNESSES WERE SWORN BY THE
10 CLERK.)

11 **BY THE COURT:** You may place them in the witness
12 room.

13 WITNESSES LEAVE THE COURTROOM. RULE INVOKED.

14 **BY THE COURT:** Ladies and gentlemen, the first
15 thing that is going to happen is that each side will
16 give you an opening statement. That is not going to
17 be all that lengthy, and it is not evidence. The only
18 evidence that you can consider comes from the witness
19 stand and the exhibits that I allow into evidence.
20 What the lawyers say is not evidence, but what they
21 say during this trial may be helpful to you in
22 evaluating that evidence. The opening statements, the
23 purpose of that is not to argue the case. We will do
24 that at the end of the case. The purpose of the
25 opening statement is so that both sides can give you
26 their version of the facts of this case, and it
27 basically gives you an outline of what this case is
28 about and where they expect it to go during the time
29 we are in trial. But I caution you again to not

Opening Statement by Mr. Evans

1 consider what they say as evidence. You consider only
2 the evidence that comes from up here. Mr. Evans.

3 **BY MR. EVANS:** Thank you, Your Honor.

4 OPENING STATEMENT BY MR. EVANS:

5 Good morning, ladies and gentlemen. As the Judge
6 told you, what we are fixing to do is kind of give you a road
7 map of what we expect the trial to prove, and what you can do
8 during the trial is watch as each witness testifies and see
9 where these elements fall into place. We expect to show you
10 that on July the 16th, 1996, here in Winona, that there were
11 a group of people working at Tardy Furniture.

12 Ms. Bertha Tardy was in there; Ms. Carmen Rigby was
13 in there; Robert Golden was in there; and Derrick "BoBo"
14 Stewart was in there. Ms. Tardy was the owner. Ms. Rigby
15 was the bookkeeper there, and Robert and BoBo were there
16 assisting, hauling furniture, doing things like that. As a
17 matter of fact, you will hear testimony that I think Robert
18 had only been working there one day, and this was Derrick
19 BoBo's first day at work. So neither one of them had been
20 there long.

21 You will hear testimony how on the early morning of
22 July the 16th, 1996, a person came into Tardy Furniture and
23 killed all four of these people. You will hear testimony
24 that all four of them were shot in the head with a .380
25 automatic pistol. You will see pictures and hear testimony
26 of where they were laying and how everything was in the
27 store. You will also hear that approximately \$255 was taken
28 from the store during these murders.

29 Now we will show you that this Defendant is the one

Opening Statement by Mr. Evans

1 that committed these murders by several different steps. To
2 start with, we will show you that he had been an employee at
3 the store a short time before this and had had a run-in with
4 Ms. Tardy about some batteries. Now he had been sent to
5 Coast to Coast to pick up some golf cart batteries, and he
6 just stacked them on the back of the vehicle. These
7 batteries, some of them fell off and busted on the way back
8 down there. And Ms. Tardy told him that he was going to have
9 to pay for these batteries. You will hear the prices of the
10 batteries and things like that. We will cover all that
11 during the trial.

12 But you will hear that out of his last paycheck, he
13 never received his last paycheck because he was told that it
14 was going to be held because of the batteries. He had been
15 given a \$30.00 advance on his paycheck, and the rest of it,
16 which I think was around \$82 -- you will hear the exact
17 amount -- he never received. The check was made out, but he
18 was told that he would not get it because of the damage to
19 the batteries.

20 You will hear that after the murders that day, he
21 was interviewed. You will hear that in his statement he says
22 he was never on the east side of Highway 51 any time that
23 morning. That, along with other things that are in the
24 statement, you will hear the statement. One specific thing
25 that is very important is that there are numerous witnesses
26 that put him on that side of the highway that morning. To
27 start with, we have been able -- the testimony will prove
28 that the gun that was used that morning was in his uncle's
29 vehicle, Doyle Simpson. The vehicle was parked at Angelica

Opening Statement by Mr. Evans

1 here in Winona. You will hear testimony that that morning
2 approximately the time that the gun came up missing, a lady
3 by the name of Katherine Snow that worked there saw Curtis
4 Simpson [sic] leaning up against the car that the gun came
5 out of.

6 You will also hear testimony from another person
7 that saw him walking down Angelica Drive going in the
8 direction of where the car was that morning. Both of those
9 are on the east side of Highway 51. You will also hear
10 testimony from individuals that saw him walking in the
11 direction away from Angelica on Academy Street. Then you
12 will hear testimony from witnesses that saw him walking down
13 Campbell Street. Two different individuals saw him walking
14 down Campbell Street in the direction of Tardy Furniture.
15 You will hear testimony from a witness that he was seen
16 standing in front of Tardy Furniture approximately the time
17 of the murders, walking toward the front of the store. You
18 will also hear testimony from a witness that saw him running
19 from the back of the store. All of these are on the east
20 side of Highway 51 where his statement that you will hear
21 says he never was that morning.

22 In addition to that, there will be other things.
23 You will hear testimony that when officers interviewed him
24 that day, they did a gunshot residue test on his hands, and
25 you will hear testimony that on the back side of his right
26 side there was positive gunshot residue.

27 You will also hear testimony from the initial
28 people at the scene and the crime scene experts that there
29 were bloody tennis shoe tracks in the store where after the

Opening Statement by Mr. Evans - by Mr. Carter

1 killings, someone had walked through the blood and left
2 tracks on the floor. You will hear testimony from experts
3 that have compared these type of shoes that these are
4 consistent with having been made by a size ten and a half
5 Fila Grant Hill tennis shoe. You will hear testimony that
6 when the house that he was living in was searched, an empty
7 shoe box was recovered for a pair of ten and a half Fila
8 Grant Hill tennis shoes.

9 Ladies and gentlemen, this is part of what y'all
10 will hear, but it's just something to let y'all kind of know
11 what we will be going through. You will also hear testimony
12 from crime scene experts about what was found at the scene.
13 You will hear testimony from ballistics experts that have
14 matched the gun that came out of Doyle's car. And the way
15 that was matched, because the gun was not recovered; the way
16 that was matched is that Doyle Simpson carried the officers
17 to where he had target practiced with the gun. They
18 recovered bullets that he had shot into a post. They
19 compared those to the bullets that were recovered at the
20 crime scene, and the experts, ballistic experts have been
21 able to match those bullets and say that his gun was the
22 murder weapon.

23 That's all I have at this point.

24 **BY THE COURT:** Mr. Carter.

25 **OPENING STATEMENT BY MR. CARTER:**

26 Good morning. I imagine you are surprised that you
27 are here. About eight years ago I was sitting in a courtroom
28 in Belzoni, Mississippi, and I heard about this case. And I
29 said, "Thank God that I don't have to participate in that

Opening Statement by Mr. Carter

1 case in any way." Seven years later my boss walked in my
2 office and said that we represent Curtis Flowers, and you are
3 the lead attorney. And I said, This can't be true because I
4 have already thanked God that I'm not associated with the
5 case. But I am associated with it, and I have read the facts
6 and I have investigated.

7 If I was gullible, if I was naive, I could very
8 easily assume that the State of Mississippi had somebody who
9 saw Mr. Flowers go in this store and come out of this store
10 and commit these crimes, but I'm not gullible.

11 **BY MR. EVANS:** Your Honor, this is not argument.

12 **BY THE COURT:** He is okay. Go ahead, Mr. Carter.

13 **BY MR. CARTER:**

14 And I know that they don't have anybody to do that.
15 And if you listen to this case, you won't hear a single
16 person come in here and say that they saw Mr. Flowers go in
17 or come out of that store. The evidence will show that. You
18 won't hear any experts come in and say that they saw Mr.
19 Flowers go in and outside of that store; they have proof that
20 Mr. Flowers went in and came outside of that store. You
21 won't hear it from a single person. But obviously, somebody
22 went in Tardy's Furniture Store, and somebody killed those
23 people. And you won't hear us discounting the fact that
24 those people are dead, and you won't see us being
25 disrespectful to their families.

26 As the Judge told you, what we say is not evidence.
27 So you would be wise to ignore what Mr. Evans has already
28 said, and as soon as I finish, you would also be wise to even
29 ignore what I said because the evidence comes from the

Opening Statement by Mr. Carter

1 witness stand. The prosecution is supposed to prove that
2 Mr. Flowers committed this crime or these crimes beyond a
3 reasonable doubt. I want you to listen very closely to
4 whether they can actually do that, to whether anybody can
5 come in here and say that they saw Mr. Flowers with a gun,
6 that they saw Mr. Flowers get a gun, that they saw Mr.
7 Flowers go in the place or come out of that place. Listen
8 very carefully to whether you will ever hear that.

9 This case is not about who killed those people.
10 The State's evidence will only show who could have killed
11 them. Listen very carefully to whether they prove to you who
12 did it or who could have done it. On or about the time of
13 the murders, there was a gentleman who said he saw two medium
14 skin people in front of Tardy's Furniture Store. You are
15 likely to hear that. Irrespective of that, we are here
16 representing Curtis Flowers today. I want you to pay close
17 attention to whether or not Curtis Flowers is light skinned,
18 and I also want you to pay particular attention to Doyle
19 Simpson, who owned the gun that committed the murders and to
20 whether or not you hear evidence, and you will hear the
21 evidence that Doyle Simpson likely was in front of the
22 building and not Mr. Flowers.

23 We will show that what the government did is once
24 they found who they thought who could have killed the
25 victims, they zeroed in on that guy, and they unfairly and
26 unintelligently eliminated other people who could have done
27 it, and more likely did it. We will further show you that
28 because of shotty police work, intimidation tactics, and
29 rewards and possible offers to ignore furniture debt that

Opening Statement by Mr. Carter

1 many people came forth months after this crime as far as
2 claiming to have seen Mr. Flowers. The evidence will show
3 that out of all these people who claim they saw Mr. Flowers,
4 they will give different clothing descriptions of what he had
5 on. They will give different time frames of when they saw
6 him, but these people came forth, almost all of them, after
7 Mr. Flowers was arrested and in jail and after a reward was
8 posted. So I want you to listen very carefully for that.

9 We will also show through witnesses, probably
10 Latoya Harding and James Glover, that at least during part of
11 the time when these murders likely took place that Mr.
12 Flowers was over at his sister's house, and he couldn't have
13 been at Tardy's and at his sister's house.

14 We will show that as far as these shoes that they
15 are talking about, Grant Hill Fila shoes, size ten and a
16 half, that several people had these kind of shoes in the
17 community. The evidence will show that, and also we will
18 have Connie Moore, who will come here and testify that she
19 bought her son Marcus some Fila Grant Hill shoes, size ten
20 and a half, which explained why the shoe box was found at
21 Connie Moore's house or Mr. Flowers' house.

22 I want you to listen very carefully to how flimsy,
23 how weak this motive is that they are claiming that brought
24 about Mr. Flowers' run-in and killing all those four people.
25 Listen very carefully for that. The evidence will show that
26 Mr. Flowers decided not to go back to work, not that he was
27 fired. The evidence will show that Mr. Flowers had no
28 problem with the fact that he negligently damaged four
29 batteries and therefore money should be taken out of his

Opening Statement by Mr. Carter
check.

We will further show that there are no fingerprints inside the building at all that connects Mr. Flowers with this crime. We will also show there is no fingerprints, no evidence in Doyle Simpson's car where the gun was allegedly taken from that connected Mr. Flowers. And we will also show that Mr. Flowers told them -- a large array of clothes was taken from Mr. Flowers as well as tennis shoes that were sent to the crime lab. We will show that there is no evidence connected to his clothes that connects him to any of the victims. There were stains found on his clothing, but none of those stains could be connected to Mr. Flowers.

The government wants you to believe that Mr. Flowers committed four murders in a nearly perfect way and that the only mistake he made was that he left some footprints in the store. We will show you that there is no tennis shoes obtained from Mr. Flowers that connects Mr. Flowers to this crime, and there is no gun available that connects Mr. Flowers to this crime.

We expect that a Katherine Snow will testify that she saw somebody near the car that the gun was taken from, not by the door, and as I understand, I think in front of the car. She will never say that she saw anybody going into that car. And in fact, she would never say that she immediately told the police that it was Curtis Flowers she saw. She didn't know who it was she saw at first.

I have a habit of talking kind of fast; I admit that. And I will make an effort during the trial to be careful and talk slowly enough so that you can understand

Opening Statement by Mr. Carter

1 what I'm saying and not get excited. I also have a habit of
2 getting excited as you can probably tell.

3 We will further show and you heard Mr. Evans say a
4 few minutes ago that our client lied and gave some
5 inconsistent statements. The evidence will show that Mr.
6 Flowers is not the only person who gave some inconsistent
7 statements. If you will listen very carefully, you are going
8 to find out that Doyle Simpson gave some inconsistent
9 statements or lied. But most of all, ladies and gentlemen, I
10 want you to watch very closely because you are going to find
11 out another person gave even more inconsistent statements or
12 lied, and I want you to pay particular attention to who that
13 person works for and who that person is and what his role is
14 in this case. I'm not going to even tell you his name
15 because I want you to figure it out for yourself.

16 We will further show, and I'm wrapping it up, that
17 the government cannot prove this case by trustworthy,
18 reliable evidence. All they can show you is who could have
19 done it, and what they are trying to get you to do is to
20 convict Mr. Flowers based on conjecture, based on surmise,
21 based on possibility, and based on assumptions.

22 You might have heard Mr. Evans mention a Clemmie
23 Fleming, or maybe he didn't mention her, but he told you
24 earlier that there was somebody that is going to come in and
25 testify they saw Mr. Flowers somewhere near Tardy's, and I
26 expect that that will be a Clemmie Fleming or Mary Jeanette
27 Fleming. Listen very carefully to the evidence and what they
28 have to say, any cross-examination.

29 And finally, ladies and gentlemen, there is no way

Sam Jones - DIRECT

1 I can tell you everything we expect to prove to you or to
2 show to you. Much of it you will just have to wait and see
3 what happens. But if you will listen carefully to the
4 evidence, I believe you will have to conclude that this case
5 is not about who did it, but who could have done it. Thank
6 you.

7 BY THE COURT: Who do you have first?

8 BY MR. EVANS: Sam Jones.

9 BY THE COURT: Mr. Jones, come around here and
10 have a seat. Right over here.

11 SAM JONES, JR.,

12 a black male having been called to testify as a witness by
13 the State of Mississippi, having first been duly sworn,
14 testified as follows, to-wit:

15 BY THE COURT: State your name please, sir.

16 BY THE WITNESS: Sam Jones, Jr.

17 BY MR. EVANS: May I proceed, Your Honor?

18 BY THE COURT: Yes.

19 DIRECT EXAMINATION BY MR. EVANS:

20 Q. Good morning, Mr. Jones. Mr. Jones, I want to get
21 you to speak loud so that everybody over here can hear you.
22 Okay?

23 A. Yes.

24 Q. Where do you live, Mr. Jones?

25 A. Beg your pardon?

26 Q. Where do you live?

27 A. 302 Harper Street.

28 Q. Is that in Winona?

29 A. Yes.

Sam Jones - DIRECT

1 Q. How long have you lived in Winona?

2 A. Eighty-three years.

3 Q. Okay. Mr. Jones, did you know or did you have any
4 relationships with Tardy Furniture?

5 A. Any relationship with who?

6 Q. Tardy Furniture. Did you ever work for Tardy
7 Furniture?

8 A. Oh, yes.

9 Q. How long did you work for Tardy Furniture?

10 A. Approximately, I partially retired I think it was
11 '65. However, I was working part time with them when this
12 accident happened.

13 Q. All right, in all how many years have you worked
14 with them?

15 A. Fifty some odd years.

16 Q. Okay. Mr. Jones, do you remember July the 16th,
17 1996, when the people were killed at Tardy's?

18 A. Say?

19 Q. Do you remember the day that the folks were killed
20 there at the store?

21 A. Oh, yes, sir.

22 Q. I want to ask you if you had any contact with
23 anyone at the store that morning?

24 A. That morning?

25 Q. Yes, sir.

26 A. She called me that morning.

27 Q. And who called you?

28 A. Ms. Tardy, the owner.

29 Q. And why did she call you?

Sam Jones - DIRECT

1 A. She called me to -- well, she was wanted me to --
2 see, I did part time work for them after I retired. And she
3 wanted me to come down and show them how to load a truck,
4 load the truck, make a delivery. She had a special delivery
5 there going out, and she wanted me to come down and show them
6 how to load it and go with them and then show them how to
7 unload.

8 Q. Who were you going to show how to load the
9 furniture?

10 A. BoBo Stewart and Robert Golden.

11 Q. How long had they been working there at the store?

12 A. BoBo, I don't think BoBo had been there over two or
13 three days, and that was Robert's first day. Of course, he
14 come by my house that night, and I helped him get the job.
15 He was supposed to start working the next day.

16 Q. Okay. How long had you known Robert Golden?

17 A. Know?

18 Q. How long had you known Robert Golden?

19 A. Oh, I had been knowing him all his life.

20 Q. Are you related to him in any way?

21 A. I found out after this happened that I was. I
22 didn't know it. But I found out after this accident happened
23 that he was a cousin of mine on his mother's side.

24 Q. All right. And you say you helped him get a job
25 down there?

26 A. Yes.

27 Q. How did you do that?

28 A. I talked to her. Usually I had been there long
29 enough and everybody that come in there, all but Curtis,

Sam Jones - DIRECT

1 well, they had to come by me. I recommended them, and she
2 would hire them. Because see, I was working there, and I was
3 the service manager. And anybody else, anybody come in,
4 well, I usually be the one to recommend them. Yes, sir.

5 Q. Everybody that started working down there except
6 Curtis Flowers you had recommended?

7 A. Say?

8 Q. Everybody that was working there that had come in
9 except for Curtis Flowers--

10 A. Yes, that's right.

11 Q. -- was recommended by you. Did you say it was
12 about 9 o'clock that Ms. Tardy called you?

13 A. It was approximately 9 o'clock, somewhere in the
14 neighborhood of 9 o'clock.

15 Q. What did you do after she called you?

16 A. Oh, after I, after she called and after I talked to
17 her, well, I left immediately going down to the store.

18 Q. Did you go straight to the store?

19 A. Well, no. I started straight to the store. But
20 when I got down to the post office, I changed my mind and
21 went down Carrollton Avenue there, and I was going to pull up
22 on the lot, pull my truck up on the lot at the side of the
23 store on Carrollton and where I would have my tools and
24 everything there to work on whatever I had. If I had any
25 repairs to make, I would have my tools right there, and I
26 wouldn't have to go out to the front to get them. But when I
27 got there and started up on the lot, well, I looked up the
28 alley there, and I saw it was several people talking up
29 there, several men talking up there. See, I was going to --

Sam Jones - DIRECT

1 what I had told her during the conversation when she called,
2 I told her that I would be down -- she wanted to know was I
3 coming down, make sure I was coming that morning. And I told
4 her that I was coming, but I had to stop before I got there.
5 I was going to stop up at Coast to Coast.

6 Q. Okay.

7 A. And so when I got there to go up on the parking
8 lot, well, I saw several of them talking up there, and I
9 thought the man that I wanted to see was up in the crowd.
10 And I just turned and went straight up the alley. And of
11 course, when I got up there, well, he wasn't there. I talked
12 to Jimmy Lee Sanders that worked there, and he told me no,
13 George had gone on a service call, and he said go on over
14 there and park, said he will be back in a little bit. I said
15 no, I'm going on down here and get through with this, and
16 then I will be back. So--

17 Q. About what time did you get to Tardy's that
18 morning?

19 A. What time did I do what?

20 Q. Get to Tardy Furniture.

21 A. Oh, it was, it was somewhere between 9:30 -- well,
22 I would say between 8:15 and 9:30. I left home around 8:15
23 or somewhere in the neighborhood of there going to the store,
24 which it don't take me but just a little bit to get down
25 there.

26 Q. All right, now you are saying 8:15. What time did
27 Ms. Tardy call you?

28 A. Well, she called, that's what I'm telling you.
29 See, she called, it was probably 8:15 when she called. And I

Sam Jones - DIRECT

1 got to the store sometime between the time that she called,
2 and it wasn't over 9:30.

3 Q. Okay, was it 8:15 or 9:15?

4 A. 9:15.

5 Q. 9:15?

6 A. I'm sorry. 9:15.

7 Q. I just wanted to make sure I understand you. All
8 right, so if she called you about that time, about how long
9 did it take you to go down there, talk to the folks at Coast
10 to Coast, and then go on to the store?

11 A. Well, it didn't take me over four or five minutes
12 to do that because I talked to one of the men that works at
13 Coast to Coast. He told me the other one was gone. I was
14 going to see George, but George wasn't there. Jimmy told me
15 George wasn't there, so I never cut my motor off.

16 Q. All right, about how long did it take you to drive
17 from your house down there?

18 A. It takes me maybe five, four or five minutes going
19 one way, and it's a little, I could go a little less because
20 see, I live nine-tenths of a mile from my house to the back
21 door of Tardy's store.

22 Q. All right. So somewhere between the time that she
23 called you around 9:15, something like that; and 9:30, 9:45,
24 somewhere around there is when you got to the store?

25 A. Yes. Somewhere in the neighborhood of that time.

26 Q. Okay. And you weren't watching your watch. You
27 are just estimating; is that right?

28 A. Yes, sir.

29 Q. Okay. Mr. Jones, when you got to the store, how

Sam Jones - DIRECT

1 did you go in the store? Did you go in the front, the back?
2 How did you go in?

3 A. I went in the front, front door.

4 Q. Okay. When you walked in the store, when you first
5 went in the door, did you see anything unusual?

6 A. Say when I?

7 Q. When you first went in the store, did you see
8 anything unusual?

9 A. No, sir. Everything looked normal, but I didn't --
10 the fact of the business I didn't see nothing but the
11 furniture, but I wasn't thinking about that. I was looking
12 to see Mr. Tardy.

13 Q. Okay.

14 A. He would usually sit on the platform up there.

15 Q. All right. What did you do after you went in the
16 store?

17 A. Oh, I walked on down, oh about, it wasn't -- I
18 didn't get quite, it wasn't quite halfway of the store there.
19 The store has got three windows on the side there. When you
20 go in the door, there is another door that goes over in the
21 other side, and then it's a window. And on down the side
22 there is another window. But I had got past this second
23 window when I realized I didn't see nobody. And then I
24 walked on. I thought that -- I didn't know; they was always
25 trying to pull some kind of trick on me. We all had a good
26 time down there, and they was always trying to pull some kind
27 of trick on me. And I was wondering, I said now I wonder
28 what is going on here, what they are trying to do. And I
29 walked on a little further, and that's when I heard this

Sam Jones - DIRECT

noise.

Q. What kind of noise did you hear?

A. It was a noise like somebody trying to get their breath or something like that.

Q. Okay.

A. And I stopped, and I stopped right there. I was about halfway of the store then. And I stopped, and I said, I wonder what was that. But I was looking up to see somebody standing up somewhere in there. And I made about two or three more steps, and I heard it again, and I stopped again. And when I stopped that time, well, just as I started off, well, I kind of glanced down, and I glanced at BoBo's head about that far out in the, from the desk.

Q. Okay, you say BoBo's head was about that far out from the desk?

A. Yes, sir, the head. Yes, sir. That's all I saw was his head, and then I rushed on up there to where it was, to see what was going on, and I got up there. And there he, he was laying out there in this puddle of blood. It was right where they go down the ramp to go in the other store. And so I looked at him. I looked at him, and then I glanced around.

Q. Could you tell at that time if BoBo was still alive or not?

A. Sir?

Q. Could you tell at that time whether BoBo Stewart was still alive or not?

A. He was -- yes, sir. He was alive at that time because he was laying on his back, and he was looking at me.

Sam Jones - DIRECT

1 Q. What was he doing?

2 A. Every time he would breathe the blood would run
3 over his face, and I tell you. (NOTE: Witness is crying.)

4 Q. Just take your time, Mr. Jones.

5 A. Yes, I tell you. You don't know. It was hard
6 there, and it's hard, it's still hard to see all those people
7 in that shape. And so I looked at him, and then I looked
8 around, and I saw Robert sitting at the other end of the
9 counter. He was sitting at the other end of the counter. He
10 had this hand laying up here, and his left hand was laying on
11 the floor. And I looked behind me, and there Ms. Rigby was
12 laying stretched out behind me. This hand was up in front of
13 her, and this one was behind her. Her key ring was around
14 her little finger.

15 And so I went back to BoBo, and I said, I looked at
16 him, and I went to get help for him. That's when I decided
17 that -- all, I figured the rest of them was dead. And when I
18 looked at BoBo again, well, he was still alive, and I went to
19 get help for him.

20 Q. All right, sir. Let me stop you right there for
21 just a minute.

22 (Photographs shown to Counsel opposite.)

23 Q. Mr. Jones, I want to hand you Exhibit S-2 for
24 identification and ask if you can identify what that
25 photograph shows.

26 A. (Pause while witness looks at photograph.)

27 Q. Just what business does that show?

28 A. That's Tardy Furniture.

29 Q. Is that the same store that you went in where you

Sam Jones - DIRECT

1 found the four people shot?

2 A. Yeah, that's the same store. That's it. That's
3 the same store.

4 (Mr. Evans gets out blowup of Exhibit S-2 which was
5 marked Exhibit S-2A for identification.)

6 Q. May I see that picture. Yes, sir. I will also
7 show you Exhibit S-2A and ask you if this is an enlargement
8 of the same picture that you see there?

9 A. It's the same picture, yes. Same picture right
10 there.

11 Q. All right, sir.

12 BY MR. EVANS: Your Honor, I offer S-2 and 2A
13 into evidence.

14 BY MR. CARTER: May I see it first?
15 (Defense Counsel looks at exhibits.)

16 BY THE COURT: Any objection?

17 BY MR. CARTER: No.

18 BY THE COURT: Let them both be entered into
19 evidence.

20 (SMALL PHOTO OF TARDY FURNITURE AND BLOW-UP OF THE
21 SAME PHOTOGRAPH THAT WERE PREVIOUSLY MARKED AS STATE'S
22 EXHIBITS S-2 AND S-2A FOR IDENTIFICATION WERE NOW BOTH
23 RECEIVED IN EVIDENCE.)

24 BY MR. EVANS:

25 Q. Mr. Jones, I'm going to hold this S-2A up so the
26 jury can see. Can you point out where the door is that you
27 walked in on the store? Can you see it on here?

28 A. Right in front of the police car.

29 Q. Right here?

Sam Jones - DIRECT

1 A. Right there.

2 Q. All right.

3 (Mr. Evans takes out more photographs.)

4 Q. All right, Mr. Jones, next I want to show you
5 Exhibits 16, 17, 18 and 19 for identification. Well, excuse
6 me just a minute.

7 (Photographs just referred to were shown to
8 Mr. Carter along with the blow-ups of the same photographs.)

9 BY MR. EVANS:

10 Q. All right, Mr. Jones, if you would, look at these
11 photographs and tell me if this is the way that you saw, if
12 this is what you saw in the store as far as Mr. Golden that
13 day?

14 A. (Pause) That's BoBo. (Pause, looking at another
15 photograph) That is Robert, but now I didn't see him in that
16 position.

17 Q. All right. Describe to me how he was when you
18 first went in the store.

19 A. When I saw him he was -- let's see that picture
20 back. Both of these pictures right there, when I saw them,
21 he was sitting up; he had walked to the end of this counter,
22 edge of this counter right here, it looked like because
23 that's where they sign in every morning.

24 Q. Yes, sir.

25 A. He walked there, and he had slid down, looked like
26 he just slumped down to the edge of it, just slid down the
27 counter, and he was sitting flat. And like I said, he had,
28 his right hand was placed right up here and left hand
29 stretched out on the floor, laying flat on the floor.

Sam Jones - DIRECT

1 Q. All right, sir. And the two photographs that you
2 are talking about are S-16 and S-19?

3 A. Yes.

4 Q. All right, sir.

5 A. As far as --

6 BY MR. EVANS: Your Honor, I offer these two into
7 evidence.

8 BY THE COURT: Any objection?

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let them be marked.

11 (TWO PHOTOGRAPHS OF ROBERT GOLDEN PREVIOUSLY MARKED
12 AS STATE'S EXHIBITS S-16 AND S-19 FOR IDENTIFICATION WERE NOW
13 RECEIVED IN EVIDENCE.)

14 BY MR. EVANS:

15 Q. As far as Ms. Rigby, how was she laying?

16 A. Now Ms. Rigby was -- see the counter runs across,
17 was coming across. Say if her desk is like this in front of
18 me. Then there is a couch. It was a sofa was sitting like
19 back here facing the counter. And Ms. Rigby was laying
20 stretched out across in front of the sofa.

21 Q. All right, I want to -- well.

22 (Two photographs were shown to Counsel opposite.)

23 BY MR. EVANS:

24 Q. I want to show you Exhibits S-13 and S-26 and ask
25 you if you can identify those two photographs?

26 A. (Pause) Yes, sir. I can identify them.

27 Q. Who do those photographs show?

28 A. That's Ms. Rigby and Robert, Robert Golden.

29 BY MR. EVANS: Your Honor, I offer these two

Sam Jones - DIRECT

1 photographs into evidence.

2 **BY THE COURT:** Any objection?

3 **BY MR. CARTER:** No objection.

4 **BY THE COURT:** Let them be admitted.

5 (TWO PHOTOGRAPHS REFERRED TO ABOVE PREVIOUSLY
6 MARKED AS STATE'S EXHIBITS S-13 AND S-26 FOR IDENTIFICATION
7 WERE NOW RECEIVED IN EVIDENCE.)

8 BY THE WITNESS:

9 A. Is that all you wanted on that?

10 Q. No, sir, just a minute. Did you notice any keys in
11 the store anywhere?

12 A. Any keys?

13 Q. Yes, sir.

14 A. Ms. Rigby's, it was around Ms. Rigby's finger. I
15 believe it was her little finger.

16 Q. Okay. Do you know what that key ring looked like?

17 A. Say do I know what the keys looked like?

18 Q. Yes, sir. The key ring, any of it?

19 A. I can't remember exactly now what the key ring
20 looked like, but if I see it, I would know it.

21 Q. I will show you Exhibits 14 and 15 and ask you to
22 look at these two.

23 **BY MR. EVANS:** Excuse me just a minute.

24 (Two photographs were shown to Mr. Carter.)

25 BY MR. EVANS:

26 Q. If you would, look at those two photographs.

27 A. That's her key chain.

28 Q. All right, sir. And that is Exhibit 15, and if you
29 would, look at the keys close to her hand here and see if

Sam Jones - DIRECT

1 that's the same ones?

2 A. That's the same ones except I believe -- I said it
3 was around her little finger. It's around, that key chain
4 was around her thumb. That's where it was, around her thumb.

5 Q. All right, sir. When you first got in there?

6 A. When I first got in there.

7 BY MR. EVANS: Your Honor, I offer Exhibits 14
8 and 15 into evidence.

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let them be admitted.

11 (TWO PHOTOGRAPHS REFERRED TO ABOVE THAT WERE
12 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-14 AND S-15 FOR
13 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

14 Q. Where was Ms. Tardy located in the store?

15 A. Say where was who?

16 Q. Where was Ms. Tardy?

17 A. Ms. Tardy?

18 Q. Yes, sir.

19 A. Ms. Tardy was laying back, it wasn't quite halfway
20 but right straight down the same aisle. You come in; see you
21 come in the front door, and you go all the way back to the
22 back. And it was two or three offices back there, and her
23 office was on the left. And she was, she wasn't quite
24 halfway back. I would say she was a third of the way back to
25 the back.

26 Q. All right. Hold on just a second, Mr. Jones.

27 (More photographs were shown to Mr. Carter.)

28 Q. Exhibits 10 and 23, I would like for you to look
29 at. Tell us if this is how you saw Ms. Tardy in the store?

Sam Jones - DIRECT

1 A. That's her right there. That is exactly the way it
2 was, the way she was laying in the store. Now this, this
3 same picture but in other words, this picture was taken even
4 back up by the counter. That's the mattress department over
5 there, all the way up that side.

6 Q. Yes, sir.

7 A. And she was on her way to the office. That's her
8 office right back there.

9 Q. All right, she was headed in the direction of her
10 office?

11 A. Yeah, in the direction of her office.

12 Q. Okay.

13 A. Because that's the mattress department over on this
14 side, and this is the aisle between this sofa here and these
15 king size -- that is the queen size mattress there.

16 Q. All right, thank you, Mr. Jones.

17 BY MR. EVANS: Your Honor, I offer Exhibits 10
18 and 23 into evidence.

19 BY MR. CARTER: No objection.

20 BY THE COURT: Let them be admitted.

21 (TWO PHOTOGRAPHS REFERRED TO ABOVE PREVIOUSLY
22 MARKED AS STATE'S EXHIBITS S-10 AND S-23 FOR IDENTIFICATION
23 WERE NOW RECEIVED IN EVIDENCE.)

24 BY MR. EVANS:

25 Q. Mr. Jones, once you found these four folks shot in
26 the store and BoBo was still breathing, what did you do next?

27 A. I went to get help for him.

28 Q. Where did you go to get help?

29 A. Coast to Coast.

Sam Jones - DIRECT

1 Q. And what did you do there?

2 A. I told the lady that was working in there. I don't
3 remember her name now, but I told her to, asked her to call
4 the-- I can't, the police and the ambulance as quick as she
5 could get the ambulance. I told her to call them and get
6 them down there quick as she could.

7 Q. All right, once you told her that, what did you do?

8 A. I come out and went back down there to the front of
9 the store.

10 Q. And did any officers arrive?

11 A. They hadn't got there then.

12 Q. All right, who was the first officer to get there?

13 A. The Chief. Chief Hargrove.

14 Q. Okay. Did Chief Hargrove go inside?

15 A. Say, beg your pardon?

16 Q. Did Chief Hargrove go inside the store?

17 A. Yes.

18 Q. What did you do when the Chief went in the store?

19 A. I went inside with him, yes.

20 Q. Mr. Jones, once you went in with Chief Hargrove,
21 did you notice anything this time you went in the store that
22 you hadn't noticed the first time?

23 A. Well, right at that particular time I didn't, but
24 after I stood there a minute or two, there was, we was
25 looking -- at least I was looking at BoBo. I got down again
26 looking at BoBo, and when I raised up, it kind of glanced
27 over, to glance over the store, well, that's the way I saw
28 the track.

29 Q. All right, describe the tracks that you saw.

Sam Jones - DIRECT

1 A. It was a track there. It was a, had a horseshoe
2 shape tread on it. It was, it had the treads in it was, they
3 come around just like, kind of like a horseshoe.

4 Q. All right, what brought your attention to those
5 tracks? What made you notice them?

6 A. Say what? Made me notice them?

7 Q. Yes, sir.

8 A. I just, in other words, I was looking at him, and
9 when I raised up, I saw that track over there. And now one
10 thing that I noticed about the track, whoever made it, when
11 he hit it, look like he was trying to jump the blood. It was
12 kind of--

13 BY MR. CARTER: -- Your Honor, I object to that.

14 BY THE COURT: On what basis?

15 BY THE WITNESS: It--

16 BY MR. EVANS: -- Wait just a second until the
17 Judge rules, Mr. Jones.

18 BY MR. CARTER: On the basis that he is
19 speculating about what the person did.

20 BY MR. EVANS: He is stating his opinion of what
21 he saw.

22 BY THE COURT: He is giving a lay opinion. It is
23 overruled.

24 BY MR. EVANS:

25 Q. You may continue. You can continue, Mr. Jones.

26 A. Huh?

27 Q. You can continue.

28 A. Well, that's what I noticed that about. I noticed
29 the track and the way it was placed in there.

Sam Jones - DIRECT - CROSS

1 Q. Okay. So whoever left that track had stepped in
2 the blood; is that correct?

3 BY MR. CARTER: Object to the leading.

4 BY THE COURT: Overruled.

5 BY THE WITNESS:

6 A. Say whoever made the track--

7 Q. Yes, sir. Whoever made the track that you saw had
8 stepped in the puddle of blood; is that correct?

9 A. Yes.

10 Q. Okay.

11 BY MR. EVANS: Your Honor, I will tender this
12 witness.

13 CROSS-EXAMINATION BY MR. CARTER:

14 Q. How are you doing, Mr. Jones? My name is Ray
15 Carter.

16 A. Yes.

17 Q. Now I don't know if you answered this question
18 earlier, but can you tell me the route you took to get to
19 Tardy's that day if you remember?

20 A. Beg your pardon?

21 Q. Do you remember the route you took, what streets
22 you took, what roads you took to get to Tardy's on the day
23 that the murders occurred?

24 A. Say do I?

25 Q. Can you tell me what route, what roads you took?

26 A. Oh, going -- oh, I got you. Yeah, I can tell you.
27 I went down, in other words, I live on Harper Street. And I
28 backed out of my driveway, come up Harper Street to Campbell
29 Street. Campbell Street comes straight out to 51 Highway or

Sam Jones - CROSS

1 Applegate Street. And I was going -- sometimes now, I could
2 go to Campbell Street. If I go all the way on Campbell
3 Street, I could go all the way down and come out on Church
4 Street, which would be right behind the store. But most of
5 the time when you go that way somebody will be talking and in
6 the street talking, and you lose a lot of time there. I
7 pulled up to the, when I pulled up to the stop sign on
8 Campbell and Applegate, well, I looked down at the light, and
9 the light was on green. But it wasn't nobody there. And I
10 knew it was going to be on red when I get there. So I
11 decided to take that route, and I went down to the light.

12 Q. What road was that you took there?

13 A. Huh?

14 Q. You say you took Harper, took Harper, Campbell, and
15 what is the next street you took?

16 A. See, I come out from my house on Harper, come up to
17 Campbell, then come out to 51 Highway or either Applegate.
18 It's the same thing. And I taken a left there, went north on
19 Applegate to the red light because when I looked at the
20 light, it was on green then. And I knew it was going to
21 change before I got there, but since it wasn't nobody at the
22 light, I knew all I would have to do is just stop and take
23 off again, headed towards town. And I could do 20 miles an
24 hour going down, coming down Summit Street on into town. And
25 I could get there quicker. And that's the way, that's the
26 route I took. I come down Campbell to Church Street at the
27 post office there, and then went down Church Street to
28 Carrollton, and that put me back of the store.

29 Q. Okay. And as you drove down Harper, Campbell,

Sam Jones - CROSS

1 Church and Carrollton, you didn't see anybody running, did
2 you?

3 A. No, sir.

4 Q. And you didn't see Mr. Flowers anywhere; is that
5 correct?

6 A. No, sir. I didn't see him.

7 Q. Okay. Now you said a few minutes ago that Mr.
8 Golden wasn't in the position on the photographs that you
9 were shown a few minutes ago?

10 A. Uh-hum.

11 Q. Does that mean that somebody had to move?

12 A. On that, now he was -- when I saw him, just like I
13 said, when I saw him, well, he had his hand up here, and the
14 other hand was on the floor. But he was leaning up against
15 the counter. Now he was in the same spot where he was, but
16 he just had, looked like he might have -- I don't know
17 whether somebody pushed him or eased him. He could have just
18 slipped over.

19 Q. Yes, sir.

20 A. But he was sitting in the same, he was laying in
21 the same spot. If you straightened him back up, he would
22 have been right back where he was to start with.

23 Q. Yes, sir. Now I also noticed that, if I'm not
24 mistaken, that you said with respect to Ms. Rigby that you
25 thought the key ring was on her little finger, but when you
26 looked on the photograph, it was on her thumb. So I take
27 that to mean that after you looked at the photograph, you
28 agreed that the keys were probably on her thumb; is that
29 correct?

Sam Jones - CROSS

1 A. Yeah, that's right. That's right.

2 Q. Now you also said based on where Ms. Tardy was
3 located, that you thought she was going to the back. Do you
4 remember saying that?

5 A. Yes.

6 Q. But isn't it true that she could have also been
7 coming from the back and going to the front?

8 A. Well, I don't know about that because if I'm headed
9 towards the back door there, and if I fall and I'm headed
10 toward the door going out there and my feet back here, now
11 more than likely, I would be, I fell forward. That's the way
12 I see it.

13 Q. Okay, so you are just--

14 A. I don't know which way she was headed, but I was
15 just telling the way she fell, that she was going towards her
16 office.

17 Q. Yes, sir. I understand. On that particular
18 morning you went to Coast to Coast before you went to
19 Tardy's; is that correct?

20 A. That's right.

21 Q. Now isn't there a business or something that is
22 located or that was located behind Coast to Coast?

23 A. A building?

24 Q. Was there some kind of business?

25 A. Oh, yeah, behind. The tire shop back there.

26 Q. There was a tire shop behind Coast to Coast?

27 A. Yes.

28 Q. And were there also buildings that was exactly or
29 were exactly behind Tardy's Furniture store?

Sam Jones - CROSS

1 A. Yeah.

2 Q. What was the name of the building behind Tardy
3 Furniture store?

4 A. Weed Brothers.

5 Q. Weed Brothers, okay.

6 A. Yes, Weed Brothers, that's.

7 Q. And -- are you finished?

8 A. Yeah, at that time it was Weed Brothers. No, they
9 was just painting cars over there then.

10 Q. Now the building that was located directly behind
11 Coast to Coast, what was that building, that business called?

12 A. Directly behind the store?

13 Q. Yes, sir.

14 A. That was Weed Brothers. Now see, the tire shop was
15 up on the corner, and then right down below there was Weed
16 Brothers shop. They had this shop there.

17 Q. So if I'm understanding you correctly, and I do
18 want to be clear, Weed Brothers had a shop that was large
19 enough to be behind Tardy's and Coast to Coast?

20 A. That's right. It was directly behind. And now
21 right up above there was Coast to Coast. There is a tire
22 shop up there on, right on the corner, right above.

23 Q. Yes, sir.

24 A. Yes.

25 Q. Now do you know whether or not Chief Hargrove had
26 already gone into Tardy's before you got back or not?

27 A. Before I got there?

28 Q. After discovering the bodies, you went to Coast to
29 Coast?

Sam Jones - CROSS

1 A. Yes.

2 Q. To get somebody to call for an ambulance and the
3 police, and by the time you left there and went back down to
4 Tardy's, you saw Chief Hargrove; is that correct?

5 A. That's right.

6 Q. Do you know whether or not Chief Hargrove had
7 already gone inside the building before you got back?

8 A. No, I was there waiting when he come back down,
9 when he come, drove up.

10 Q. Now your testimony is the first time you went into
11 the building you did not see any foot impressions; is that
12 correct?

13 A. That's right.

14 Q. Do you know whether you saw the foot impressions
15 before Chief Hargrove, or he saw it after you?

16 A. I don't know which one saw it first.

17 Q. Did Chief Hargrove or anyone else you saw check the
18 shoes of anybody you saw there?

19 A. Say did they do what now?

20 Q. Did anyone -- strike that. Did anyone check the
21 sole of your shoes to make sure that your shoes didn't comply
22 with the footprints?

23 A. Check my shoes?

24 Q. Yes, sir.

25 A. Yeah. They checked them. Yes.

26 Q. Did you see anybody check any other shoes to see if
27 their shoes complied with--

28 A. No, sir. I didn't.

29 Q. How long did you stay there that day at the crime

Sam Jones - CROSS

scene?

A. Practically all day.

Q. Practically all day?

A. Yes, sir.

Q. On State Exhibit number 2, which is the front of Tardy's -- may I approach, Your Honor? -- furniture store, do you recognize any of those people that are standing there?

A. I can't recognize them.

Q. So you don't know who they are?

A. Uh-uh. I don't know them.

Q. Mr. Jones, who did you see go into Tardy's that day besides yourself and Chief Hargrove?

A. Say who did I see what?

Q. Who did you see, and name the person if you can that you saw go into Tardy's Furniture store that day?

A. Go in there?

Q. Yes, sir. If you can recall.

A. The first was, well, I was the first one in there. Then after they called the police, Chief Hargrove, he come down there. And the next one, the next police come down there was -- let's see. I forget his name now. Townsend. Yeah, Mr. Townsend come down there.

Q. And who did, can you identify--

A. --He is a police. Yeah, he was one of the police. He come down there.

Q. Which department is he with? Do you know?

A. Huh?

Q. Which department? Was it the Sheriff's Department, Winona Police Department or?

Sam Jones - CROSS

1 A. Oh, that was police department.

2 Q. Okay. I'm sorry. Go ahead.

3 A. Yes.

4 Q. Anybody else?

5 A. And I was just trying to think. It seems, now I
6 may be wrong about this. It seems like it was, there was
7 another police come down there, I think. Officer Yates, I
8 believe, he come down there. Now they started coming in
9 then, and after that, now I can't tell you the rest of them
10 because I don't.

11 Q. Thank you. Now as far as you know, on that
12 particular day was Weed Brothers open for business?

13 A. Say was they open?

14 Q. Yes, sir.

15 A. Yes, sir. I think they was open. I'm sure they
16 was open. Yes, sir. It was open.

17 Q. And Coast to Coast was open, not only the store
18 part, the front part, but the part that was behind Coast to
19 Coast was open also. Is that correct?

20 A. Yeah, the shop was open. Yes, sir. It was open.

21 Q. Now behind Tardy's and Coast to Coast, there is a
22 street that looked like an alley back there. Is that
23 correct?

24 A. Yes, that's right.

25 Q. Do you know the name of that street?

26 A. I can't think of the name of that little old street
27 going up through there.

28 Q. Is it Vine?

29 A. I believe it's Vine. Vine Street runs right behind

Sam Jones - CROSS

1 Tardy's store, go all the way across Greenwood, I think, over
2 there.

3 Q. Now at the time you talked to, I believe it was
4 Jimmy Sanders; where was Jimmy Sanders?

5 A. Yes. Say Sanders. That's who I talked to, Jimmy
6 Sanders.

7 Q. Where was he located? Was he in Coast to Coast or
8 behind Coast to Coast or where?

9 A. That was -- no, that was between Tardy's where I
10 met him at. Where I talked to him at, it was kind of
11 between. It was behind -- it was right behind the Tardy's
12 store. That's where, we was right behind the store there.

13 Q. So you was at Weed Brothers?

14 A. Yeah -- no, it wasn't at Weed. We was in the
15 street. It was between Weed Brothers and the back of Tardy's
16 store.

17 Q. Yes, sir.

18 A. Yes. Because he was coming down the alley, you
19 see.

20 Q. Yes, sir. So if someone were to leave Tardy's and
21 go down Vine Street or up Vine, they would pass Tardy's,
22 Coast to Coast, and they would also pass Weed Brothers; is
23 that correct?

24 A. Yes.

25 Q. Now on the day that you went to Tardy's, did you
26 see any vehicles already at Tardy's?

27 A. It seems like to me it was one vehicle out there.
28 Now I'm not sure for that. I don't know. It seems like it
29 was her car or somebody's car there, but now I don't want to

Sam Jones - CROSS

1 answer. I won't answer that because I didn't see nobody.

2 BY MR. CARTER: May I approach again, Your Honor,
3 to get an exhibit?

4 BY THE COURT: All right.

5 BY MR. CARTER:

6 Q. Do you know who those two vehicles belong to?

7 A. I know the police car. The Chief was driving that.

8 Q. Yes, sir. What about the other two?

9 A. The other two there, I don't know about them.

10 Q. Yes, sir. Now did you ever park in front of the
11 Tardy's, or did you park on the side over by, I think it's
12 Carrollton over there?

13 A. I parked on the front at the second tree. See,
14 they had some trees out there in front, and I would always
15 park -- that's where I always parked at, at that second tree.
16 And in the summer time the sun would, by the time I get ready
17 to go, in other words, I didn't get too much sunshine on my
18 truck, and it wouldn't be so hot in there.

19 Q. I understand. Now did you park up against the
20 building, or did you park on the -- it would be the north
21 side of the island that is out there. That might be
22 confusing. It's confusing to me. Do you know if you parked
23 up against the building, like did you park up say against the
24 building, the concrete here, or were you further back?

25 A. I parked back. See, those cars are parked in front
26 of the store there. But I parked, when I come out of the
27 alley, when I come out of the alley, I pulled out on Front
28 Street, went south on Front Street to the second oak tree
29 there, and parked at an angle there at that tree. That's

Sam Jones - CROSS

over in the center.

Q. Yes, sir.

A. Now it wasn't right directly in front of the store. Now when I got out of my truck, I locked it, and then I went across the street. I went at an angle down to the Front Street to the front door.

Q. Now once you were in front of Tardy's Furniture store, you didn't see anybody running from that area or towards that area, did you?

A. No, sir.

Q. As a matter of fact, once you were in front of Tardy's store and even after you had gone into Tardy's and came out of Tardy's store, correct me if I'm wrong, but you didn't actually see anybody walking out in front of Tardy's. Is that correct?

A. That's correct.

Q. Do you know a Doyle Simpson?

A. Yes.

Q. Do you know whether he ever worked for Tardy's?

A. Yes, he worked there.

Q. He worked there while you were working there or after?

A. He had worked there while I was working there. It was just part time.

Q. Yes, sir.

A. Yes.

Q. What time was it customary for, as far as you know, based on having worked at Tardy's so long, for Ms. Tardy and Mr. Tardy to come to work?

Sam Jones - CROSS

1 A. Say what time did he come to work?

2 Q. Did they usually come to work in the morning.

3 A. They usually opened up at, around 9:00. That was
4 their regular time to open it up, around 9:00. Of course, I
5 didn't get there at 9:00 because I didn't have to.

6 Q. Okay, I'm almost finished. When you went in that
7 morning, who were you expecting to see? Were you expecting
8 to see Ms. Tardy in particular or Mr. Tardy or everybody?

9 A. When I first went down, went in there that morning,
10 now what I said, I was looking to see Mr. Tardy.

11 Q. Mr. Tardy?

12 A. Yeah, he always -- see, Mr. Tardy was, couldn't,
13 was partial blind. And he would always sit up there on the
14 platform that I stated about. He would usually be sitting up
15 there where he would see the people come in, and he would
16 speak to them. When they speak back, well, he would catch
17 their voice. And I would always disguise my voice so where
18 he couldn't tell who it was. We was just a family of folks
19 down there, and we just had a lot of fun. I enjoyed working
20 down there.

21 Q. Okay. A couple more things and I really do mean a
22 couple. From the time you walked out of Tardy's after
23 discovering the bodies, how long did it take you to walk from
24 Tardy's to get to Coast to Coast, leave Coast to Coast, and
25 get back to Tardy's?

26 A. Uh, it takes me, it takes, it didn't take me over
27 five or six minutes because that's the reason I went to Coast
28 to Coast because I didn't have to go all the way to the back
29 and then have to explain nothing to them because I didn't go

Sam Jones - CROSS

1 all the way to the back. I just run in the door. When I
2 went up to Coast to Coast, well, after I got out of there,
3 well, I was running then. But when I left out of the store,
4 I was walking. But I was running when I run in the door
5 there, and I told the lady there to call the ambulance and
6 the police and get them down to Tardy's there quick as you
7 can.

8 Q. Okay.

9 A. Yes, sir. And then I turned right around and come
10 back.

11 Q. Okay. There are some different stores located in
12 the area now than back in 1996 when the crime occurred. Had
13 you walked out Tardy's and went right as opposed to left,
14 what buildings, if any, would have been to the right of
15 Tardy's at that time?

16 A. To the right of Tardy's?

17 Q. Yes, sir.

18 A. A pressing shop.

19 Q. What did you call it?

20 A. Pressing shop. Laundry.

21 Q. Oh, okay.

22 A. Yes.

23 Q. Which building is the closest, Coast to Coast or
24 the laundry shop?

25 A. The laundry was closer, but I had my mind on Coast
26 to Coast when I left there. That's where I had my mind. I
27 don't know; it wasn't enough for no particular reason, but
28 that's what I had my mind on was Coast to Coast. Then when I
29 come out, usually when if you leave, when I leave the store

Sam Jones - CROSS

1 going somewhere for something, it will usually be up to Coast
2 to Coast, or on up the street it was a hardware used to be up
3 the street there. I would go, if I didn't go out the back
4 and go up the alley, well, I come out the front, and it would
5 be going to Coast to Coast.

6 Q. Okay, had you come out of Tardy's and turned left,
7 I think there was a -- was Liberty Cash doing business back
8 then?

9 A. Yeah, Liberty Cash used to be there, but it was
10 closed at that time.

11 Q. One moment, Your Honor.

12 A. Yes, sir.

13 (Defense Counsel confer.)

14 BY MR. CARTER: No further questions, Your Honor.
15 Thank you.

16 BY MR. EVANS: Nothing further of Mr. Jones, Your
17 Honor. Chief Hargrove will be our next witness.

18 BY THE COURT: Is he finally excused?

19 BY MR. EVANS: Yes, sir.

20 BY THE COURT: Mr. Jones, you can go home if you
21 would like.

22 WITNESS EXCUSED.

23 BY THE COURT: We are going to take just a short
24 break, ladies and gentlemen.

25 (FOLLOWING THE MORNING RECESS ON FEBRUARY 6, 2004,
26 TESTIMONY CONTINUED IN OPEN COURT WITH ALL COUNSEL AND THE
27 DEFENDANT PRESENT:)

28 BY THE COURT: I need the jury.

29 (JURY ENTERS THE COURTROOM.)

Johnny Hargrove - DIRECT

JOHNNY HARGROVE,

a black male called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: State your name, please, sir.

BY THE WITNESS: Johnny Hargrove.

BY MR. EVANS: May I proceed, Your Honor?

BY THE COURT: Yes.

DIRECT EXAMINATION BY MR. EVANS:

Q. Chief Hargrove, how are you employed?

A. City of Winona.

Q. In what capacity?

A. Chief of Police.

Q. And how long have you been Chief of Police in Winona?

A. Almost nine years.

Q. How long have you been in law enforcement altogether?

A. Seventeen years.

Q. Chief, I want to direct your attention back to July the 16th, 1996, and ask you if you were chief here in Winona at that time?

A. Yes, I was.

Q. Did you have an occasion on that morning to be called to Tardy Furniture?

A. Yes, sir.

Q. Do you know what time you arrived at the store?

A. It was about 10:21, somewhere.

Q. Was anyone at the store when you arrived?

Johnny Hargrove - DIRECT

1 A. No, sir.

2 Q. Did you see a person there at the store at some
3 point named Sam Jones?

4 A. Yes, sir. After I came back out of the store.

5 Q. Do you know who had called the police?

6 A. I just received a dispatch that some people are
7 laying on the floor at Tardy Furniture.

8 Q. And after you received that dispatch, can you give
9 us an idea of where you were when you got the call?

10 A. Coming off of, over there by Greenlee.

11 Q. And approximately how long did it take you to get
12 to the store?

13 A. I got there pretty quick. It wasn't too long. It
14 was about, less than a minute, somewhere in there.

15 Q. Where did you park when you arrived?

16 A. The front of the store.

17 Q. And what did you do after you got to the store?

18 A. When I got to the store, I proceeded inside the
19 store.

20 Q. What did you see inside the store, Chief?

21 A. When I walked through the door, I seen Ms. Tardy
22 laying in the floor.

23 Q. And where was she laying?

24 A. She was laying sort of in the aisle way.

25 Q. Did you go on any further at that point?

26 A. Yes, sir.

27 Q. What did you do?

28 A. I proceeded on up to close to where she was, and
29 that's when I seen the other victims in the floor.

Johnny Hargrove - DIRECT

1 Q. Where was BoBo Stewart?

2 A. He was laying beside the counter.

3 Q. Where was Carmen Rigby?

4 A. She was by the counter.

5 Q. And where was Robert Golden?

6 A. By the counter.

7 Q. Could you tell at that point if any of them were
8 still alive or not?

9 A. Stewart was still alive.

10 Q. Chief, at that point when you had seen the four
11 folks on the floor with one person alive, what did you do
12 next?

13 A. At that point I backed back out of the store.

14 Q. Why did you do that?

15 A. For my safety. I didn't know if the person was
16 still in the store or not.

17 Q. What did you do after you went back out of the
18 store?

19 A. Got on my radio and asked them to send MedStat and
20 send me some backup.

21 Q. And for the record, who is MedStat?

22 A. It's going to be Barry Eskridge owned Medstat.
23 It's the ambulance service.

24 Q. After you called for backup and MedStat, what did
25 you do next, Chief?

26 A. After MedStat got there, by that time now Sheriff
27 Bill Thornburg, he drove up. And we went back in, and they
28 started getting Stewart up, putting him on the stretcher.

29 Q. And who was doing that?

Johnny Hargrove - DIRECT

1 A. The two EMT's.

2 Q. And at that point was he still alive?

3 A. Yes, sir.

4 Q. What did you notice about his condition, Chief?

5 A. He was gurgling the blood when he got up there, and
6 he was still bleeding when they put him on the stretcher.

7 Q. Was he responsive in any way?

8 A. No, sir.

9 Q. Could you tell where he was shot?

10 A. Really it looked like it was in the head to me.

11 Q. Did you notice any of the other victims, where they
12 had been shot?

13 A. Looked like in the head.

14 Q. Chief, did you find any type of evidence in the
15 store when you went back in the second time?

16 A. Yes, sir. I did.

17 Q. What did you find?

18 A. On the other side of Stewart, it was a footprint
19 there.

20 Q. Can you, what made you notice that?

21 A. When they were, when they were getting him up, I
22 was looking down. And I looked over and I seen it.

23 Q. Could you tell what had caused the footprint?

24 A. Looked like a tennis shoe mark.

25 Q. And could you tell whether the tennis shoe had
26 stepped in anything or not?

27 A. Blood. It was a blood print.

28 Q. What did you do, if anything, to preserve the
29 bloody tennis shoe track?

Johnny Hargrove - DIRECT

1 A. Started making sure didn't nobody step over there
2 where it was. Then I started checking the EMT's, what they
3 were wearing.

4 Q. All right, Chief, did you check everyone's shoes to
5 make sure that no one there had left the track?

6 A. Yes, sir. And I also checked Mr. Sam's shoe print.

7 Q. And did anybody that was there have that type of
8 shoe on?

9 A. No, sir.

10 Q. What did you do to protect the prints to make sure
11 that they didn't get messed up?

12 A. Stood there and I watched to make sure didn't
13 nobody step in it until I can get some investigators and
14 stuff there.

15 Q. What investigators arrived?

16 A. We had Jack Matthews and uh.

17 Q. Wayne Miller?

18 A. Wayne Miller.

19 Q. Who did they work with?

20 A. The Mississippi Highway Patrol.

21 Q. And was there anyone there from the DA's Office as
22 an investigator?

23 A. Yes, sir.

24 Q. Who was that?

25 A. You came and some of the other ones.

26 Q. All right, Chief, I want to show you some
27 photographs and ask you if these truly and accurately depict
28 what you saw at the scene.

29 (Stack of photographs were shown to Mr. Carter.)

Johnny Hargrove - DIRECT

1 BY MR. EVANS:

2 Q. All right, Chief, I want to show you Exhibits 11,
3 25, 17, 18, 30, 12, 22, 21, 24, and 20 and ask you to look
4 through these if you would.

5 A. (Pause while witness complies.)

6 Q. Have you had a chance to look through those
7 pictures, Chief?

8 A. Yes, sir.

9 Q. Do all of those pictures truly and accurately
10 depict what you saw at the scene when you went in?

11 A. Yes, sir.

12 BY MR. EVANS: Your Honor, I offer these into
13 evidence.

14 BY MR. CARTER: No objection, Your Honor.

15 BY THE COURT: Okay, hand them to the Court
16 Reporter and let her mark them as exhibits.

17 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
18 S-11, S-12, S-17, S-18, S-20, S-21, S-22, S-24, S-25, S-30
19 FOR IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

20 BY MR. EVANS:

21 Q. Chief, I will now show you Exhibits 16 and 19 which
22 are already in evidence and ask you if those two photographs
23 show how you found Robert Golden when you arrived in the
24 store?

25 A. Yes, sir.

26 Q. I will next show you Exhibits 10 and 23 and ask if
27 these show Ms. Bertha Tardy as you found her when you arrived
28 in the store?

29 A. Yes, sir.

Johnny Hargrove - DIRECT

1 Q. I will next show you Exhibit 14 and ask if this
2 shows Ms. Carmen Rigby as you found her when you arrived in
3 the store?

4 A. Yes, sir.

5 Q. All right, Chief, we don't have any pictures that
6 show BoBo Stewart, do we?

7 A. No, sir.

8 Q. Why is that?

9 A. The EMT's had moved in before we started taking the
10 pictures.

11 Q. Okay, so the only victims that we have photographs
12 of are the ones that were already deceased at the scene; is
13 that correct?

14 A. Yes, sir.

15 (Mr. Evans gets out large photo blowups.)

16 Q. Chief, I will next now you what is marked as
17 Exhibit 16A, 17A, 18A, and 19A, and I will ask you if this is
18 true and correct copies enlargements of those photographs?

19 A. Yes, sir.

20 Q. I will next show you Exhibit 15A, 12A, 13A, and
21 14A, and ask you if this also is correct enlargements of
22 those exhibits?

23 A. Yes, sir.

24 Q. Exhibit 20A, 21A, 23A, and 22A, are these true and
25 accurate enlargements of those exhibits?

26 A. Yes, sir.

27 Q. Your Honor, may I get the easel and have the
28 witness step down?

29 BY THE COURT: Are you going to offer those?

Johnny Hargrove - DIRECT

1 **BY MR. EVANS:** Yes, sir. I was just going to get
2 this while I was--

3 **BY THE COURT:** Okay. I just wanted to know where
4 we are going.

5 **BY MR. EVANS:** Yes, sir. I do. Those composite
6 exhibits I do offer into evidence, Your Honor.

7 **BY THE COURT:** All right.

8 **BY MR. DE GRUY:** Your Honor, may we approach the
9 bench?

10 **BY THE COURT:** Uh-hum.

11 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
12 JURY AS FOLLOWS:)

13 **BY MR. CARTER:** Your Honor, we object to the
14 enlargements of the photographs based on the purpose
15 that they are more prejudicial than probative and as
16 they duplicate what is already shown on these smaller
17 photographs.

18 **BY THE COURT:** Okay, these have been admitted
19 into evidence without objection.

20 **BY MR. DE GRUY:** He hasn't all of them yet.

21 **BY MR. EVANS:** All of those have.

22 **BY THE COURT:** He has too and without objection.

23 **BY MR. DE GRUY:** Not the enlargements.

24 **BY THE COURT:** No, no, no, that's right. The
25 same pictures, the same thing. I find that the
26 probative value outweighs the prejudicial effect, and
27 I'm going to allow it since the others were admitted.

28 **BY MR. DE GRUY:** Okay, so the objection is clear,
29 we are objecting to the enlargements.

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1 **BY THE COURT:** I understand that.

2 (END BENCH CONFERENCE. ENLARGEMENTS OF TWELVE
3 PREVIOUSLY ADMITTED PHOTOGRAPHS MOUNTED ON THREE LARGE BOARDS
4 THAT WERE PREVIOUSLY MARKED FOR IDENTIFICATION WERE NOW
5 ADMITTED IN EVIDENCE BEING STATE'S EXHIBITS S-12A THROUGH
6 S-15A ON ONE BOARD, S-16A THROUGH S-19A ON ANOTHER BOARD, AND
7 S-20A THROUGH S-23A ON THE FINAL BOARD.)

8 BY MR. EVANS:

9 Q. Chief, would you step down, please.

10 (Witness steps in front of jury box by exhibits.)

11 Q. Chief, if you would, I would like for you to stand
12 where the jury can see, and if you would, starting in the
13 upper left -- well, yeah, just starting in the upper left
14 hand corner, tell us what that photograph shows.

15 A. Talking about where the eyeglasses?

16 Q. Right. Yes, sir.

17 A. It's her eyeglasses.

18 Q. Is that -- whose eyeglasses were those?

19 A. One killed.

20 Q. And Ms. Tardy?

21 A. Yes, sir.

22 Q. And tell us what those other photographs show on
23 there.

24 A. This is going to be where Ms. Tardy was laying in
25 the aisle way. This one shows Ms. Tardy with blood dripping
26 from her head. And the other one is going to be Ms. Tardy
27 laying face down.

28 Q. All right, so all of those photographs on that
29 photograph deal with Ms. Tardy; is that correct?

Johnny Hargrove - DIRECT

1 A. That's correct.

2 Q. And that shows her, how she was when you found her;
3 is that right?

4 A. Yes, sir.

5 Q. And that is, for the record, Exhibit 20A, 21A, 23A
6 and 22A. Chief, I will now show you the Exhibits 15A, 12A,
7 13A and 14A. And if you will, tell the ladies and gentlemen
8 of the jury what that shows.

9 A. First is going to be the keys of one of the
10 victims.

11 Q. Speak up just a little.

12 A. Going to be keys of one of the victims. And this
13 hat here, this is where BoBo Stewart was laying. This is
14 Ms. Carmen, Ms. Rigby showing her feet, and this is showing
15 Ms. Rigby's body here, and this is showing Ms. Rigby's body
16 here, Robert Golden, and that's where Stewart was laying.

17 Q. All right, Chief, on the picture that you have
18 pointed to, 13A, who is this person?

19 A. Robert Golden.

20 Q. And who is this?

21 A. Carmen Rigby.

22 Q. And there is a separate puddle of blood with a cap
23 in it. Who was laying there?

24 A. BoBo Stewart.

25 Q. Can you point out the general area of where he was
26 laying in relationship to his cap and the blood?

27 A. He was laying in that puddle of blood.

28 Q. Okay, so he was actually in the puddle?

29 A. Yes, sir.

Johnny Hargrove - DIRECT

1 Q. All right, Chief, I will next show you Exhibits
2 16A, 17A, 18A, and 19A, and ask you to describe for the
3 ladies and gentlemen of the jury what that shows.

4 A. It shows Robert Golden. It is the way he was
5 laying when I got there.

6 Q. What is that, in the picture that you have pointed
7 to in the upper left hand corner, what is that to his back?

8 A. That is going to be the counter.

9 Q. Okay.

10 A. And this one is going to be Robert Golden laying up
11 against the counter too. And this one is showing Ms. Rigby,
12 Robert Golden, where BoBo Stewart was laying, and this one
13 shows Robert Golden and Ms. Rigby.

14 Q. All right, Chief, the one in the upper right hand
15 side corner that shows Robert Golden, Ms. Rigby and where
16 BoBo Stewart was laying, what is, what part of the store is
17 directly at the top of that photograph?

18 A. Directly at the top is going into another room.

19 Q. Can you describe that area of the store?

20 A. It's, you go down a little ramp like, and you go
21 into another part of the -- you go up to the left, and you go
22 to like a showroom, and you go to the right, and you go like
23 back in the storage area back there.

24 Q. All right, Chief, on I guess this one-- on Exhibit
25 17A, does that photograph show the general area where you
26 found the bloody shoe tracks?

27 A. Yes, sir.

28 Q. And I'm not trying to get you to be exact, but can
29 you point out to the ladies and gentlemen of the jury

Johnny Hargrove - DIRECT

1 approximately where those bloody tracks were?

2 A. It was just over a little bit from where Stewart
3 was laying at.

4 Q. Was it closer to that ramp?

5 A. Yes, sir.

6 Q. All right, you can have a seat again, Chief.

7 (Witness resumes witness stand. More photographs
8 were shown to Mr. Carter.)

9 BY MR. EVANS:

10 Q. Chief, I'm going to next show you another group of
11 photographs, Exhibit S-4, S-5, S-3, and S-1. If you would,
12 examine these, please, sir.

13 A. (Pause while witness looks at exhibits.)

14 Q. Can you tell us what those exhibits are, Chief?

15 A. It's going to be the downtown area in front of
16 Tardy's.

17 Q. All right, and do those four photographs show
18 different angles from Tardy's and different things that are
19 located around the store?

20 A. Yes, sir.

21 BY MR. EVANS: Your Honor, I offer these four
22 photographs into evidence.

23 BY THE COURT: Any objection?

24 BY MR. CARTER: No objection.

25 BY THE COURT: Let them be admitted.

26 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
27 S-1, S-3, S-4, AND S-5 FOR IDENTIFICATION WERE NOW RECEIVED
28 IN EVIDENCE.)

29 BY MR. EVANS: Let me make sure this is the right

Johnny Hargrove - DIRECT

1 ones. (Pause while Counsel compares photographs with
2 enlargements.)

3 BY MR. EVANS:

4 Q. Chief, I will next show you Exhibit 1A and ask you
5 if that is a true and correct enlargement of the photograph 1
6 that I showed you?

7 A. Yes, sir.

8 Q. I will next show you Exhibit 4A and ask if that is
9 a true and correct enlargement of that photograph that I
10 showed you?

11 A. Yes, sir.

12 Q. I will next show you Exhibit 5A and ask if that is
13 a true and correct enlargement of that photograph?

14 A. Yes, sir.

15 Q. And I will next show you Exhibit 3A and ask if that
16 is a true and correct enlargement of that photograph?

17 A. Yes, sir.

18 BY MR. EVANS: Your Honor, I offer these four
19 exhibits into evidence.

20 BY THE COURT: Any objection to that?

21 BY MR. CARTER: No objection.

22 BY THE COURT: Let them be marked.

23 (BLOWUPS OF PHOTOGRAPHS ON LARGE BOARDS THAT WERE
24 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-1A, S-3A, S-4A, AND
25 S-5A FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

26 BY MR. EVANS:

27 Q. All right, Chief --

28 BY MR. EVANS: Your Honor, may the witness step
29 down?

Johnny Hargrove - DIRECT

1 BY THE COURT: Yes.

2 BY MR. EVANS:

3 Q. Chief, if you would, step down again, please.

4 A. (Witness steps down in front of jury box.)

5 Q. All right, Chief, I will start with Exhibit 4A. If
6 you would, describe for the ladies and gentlemen of the jury
7 what that exhibit shows?

8 A. It's going to show in the front of Tardy Furniture.

9 Q. And can you point out what it shows, different
10 areas there?

11 A. You are going to have, go up here; you are going to
12 have where the old Liberty Cash used to be, Coast to Coast,
13 and other business area up in through there.

14 Q. All right, would you point out, just point to the
15 area where Coast to Coast is?

16 A. It's going to be. (Witness points.)

17 Q. All right, in the area out away from the store
18 where there are some cars parked, describe that area for me.

19 A. Talking about right here?

20 Q. Right.

21 A. It's going to be the area where some of the people
22 from the cleaners park at.

23 Q. Okay. Exhibit 5A, would you describe what that
24 shows?

25 A. It's going to be Winona Dry Cleaners over here, and
26 this side right here is going to be Tardy Furniture.

27 Q. Okay, so all the way over -- if you would, slide
28 this way just a little so everybody can see. All the way
29 over to the right is the side of Tardy Furniture?

Johnny Hargrove - DIRECT

1 A. Yes.

2 Q. What is the name of the street that runs between
3 Tardy Furniture and the cleaners?

4 A. Carrollton.

5 Q. Carrollton Street?

6 A. Yes, sir.

7 Q. Chief, do you see -- no, that is all right. I will
8 now ask you to look at Exhibit 1A and tell us what that
9 shows.

10 A. It's going to show where we started roping off the
11 crime scene in front of Tardy Furniture.

12 Q. Okay. And you pointed to the very right of that
13 picture. Is that where Tardy Furniture is?

14 A. Yes, sir. Right here.

15 Q. What building is that located in, might as well say
16 the center of the photograph?

17 A. In the center there is going to be Winona Sta-Home.

18 Q. Winona Sta-Home?

19 A. Yes, sir.

20 Q. All right, can you see part of the cleaners in that
21 photograph?

22 A. Yes, sir, to the right.

23 Q. Okay. And Chief, one more of these. Exhibit 3A,
24 can you tell us what this photograph shows?

25 A. It's going to show another picture in front of
26 Tardy Furniture showing Liberty Cash. It's more plain on
27 this one than the other pictures, and Coast to Coast.

28 Q. All right, step back just a little, Chief. Point
29 out where Coast to Coast is on that one.

Johnny Hargrove - DIRECT

1 A. (Witness points.)

2 Q. All right, and can you see any of the Tardy
3 Furniture building in that one?

4 A. It's going to be this corner there.

5 Q. All the way on the left hand corner?

6 A. Yes.

7 Q. Thank you, Chief. You can have a seat again.

8 A. (Witness resumes witness stand.)

9 Q. All right, Chief, after you protected the bloody
10 shoe tracks that were there, what did you do next?

11 A. By that time the investigators and all were coming
12 in.

13 Q. All right. And what agencies were involved in this
14 investigation?

15 A. The DA's Office, the Mississippi Highway Patrol,
16 and the Sheriff's Department and the Police Department.

17 Q. Okay.

18 BY MR. EVANS: Your Honor, may I have this item
19 marked for identification?

20 BY THE COURT: Yes.

21 BY MR. CARTER: May I look at it, Doug?

22 BY MR. EVANS: Yeah, let me mark it, and I will
23 bring it right over there.

24 (A CITY MAP WAS MARKED FOR IDENTIFICATION AS
25 STATE'S EXHIBIT S-117 AND SHOWN TO MR. CARTER.)

26 BY MR. EVANS:

27 Q. Chief, I want to hand you Exhibit 117 and ask you
28 to examine that if you would.

29 A. Uh-hum.

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1 Q. Can you tell us what that is, Chief?

2 A. City map.

3 Q. And does that truly and accurately show the part of
4 the city map that shows the areas that deal with this case?

5 A. Yes, sir.

6 BY MR. EVANS: Your Honor, I offer this exhibit
7 into evidence.

8 BY THE COURT: Any objection?

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let it be admitted.

11 (CITY MAP PREVIOUSLY MARKED AS STATE'S EXHIBIT
12 S-117 FOR IDENTIFICATION WAS NOW ADMITTED IN EVIDENCE.)

13 BY MR. EVANS:

14 Q. Chief, in what county and state is Tardy Furniture
15 located?

16 A. It's county of Montgomery County, State of
17 Mississippi. City of Winona.

18 BY MR. EVANS: Your Honor, I will tender Chief
19 Hargrove.

20 CROSS-EXAMINATION BY MR. CARTER:

21 Q. Good morning, Mr. Hargrove.

22 A. Good morning.

23 Q. I'm Ray Carter. Chief Hargrove, did you write out
24 a statement setting forth your observations and who you
25 talked to and so on on that particular day?

26 A. No, sir.

27 Q. Now tell me the extent of the role that you played
28 in this investigation?

29 A. What I done was protect the crime scene and wait

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1 until the investigators got there, and we assisted, just
2 assisted them on the investigation part of it.

3 Q. Okay. Did you talk to any businesses or any
4 persons that worked in any of the businesses nearby?

5 A. No, I did not.

6 Q. Now back at that time I didn't get a chance to see
7 the area, so I can't be really sure how it has changed. But
8 I have looked at it in recent days. Is the cleaners still
9 there?

10 A. No, sir. It burned down.

11 Q. Burned down.

12 A. Yes, sir.

13 Q. Sta-Home, is that still there?

14 A. Yes, sir.

15 Q. Is it still in the same spot that it was back then?

16 A. Still in the same spot, but they done some
17 expansion on it.

18 Q. Expansion.

19 A. Yes, sir.

20 Q. Was the Liberty Cash there back at that time?

21 A. Yes, sir. It was closed.

22 Q. It was closed?

23 A. Yes, sir.

24 Q. Coast to Coast was there obviously?

25 A. Yes, sir.

26 Q. How long were you at the store before Mr. Jones got
27 back down there if you recall?

28 A. When I came back out going to the radio, Mr. Jones
29 was on the walkway up there.

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1 Q. And you didn't know or have any information that
2 Mr. Jones had been there or was nearby until you came out; is
3 that correct?

4 A. Until I came out.

5 Q. How long did you stay in the store if you remember?
6 If you had to estimate in terms of, I guess minutes, seconds
7 or whatever?

8 A. Sir, a lot of stuff go through your head when you
9 walk into something like that. I couldn't, I couldn't
10 recall.

11 Q. You don't recall. Did you see or hear anything in
12 the store when you first went in there that would indicate or
13 that somebody was still there or not there, or do you know?
14 In other words, to clarify, did you hear any marks or sounds
15 that would indicate that somebody might have still been in
16 there?

17 A. No, my first reaction was to get out of the store
18 and get some backup. I didn't, I didn't hear anything.

19 Q. I understand that, and I don't blame you. But what
20 I'm trying to see--

21 A. -- I didn't hear anything.

22 Q. If you recall, okay. Now when you went outside the
23 store, that's when you saw Mr. Jones; is that correct?

24 A. I went back to my radio, and I started calling, you
25 know, for backup and MedStat and all that. That's when I
26 seen him walking back towards me.

27 Q. Where did you park? Do you recall?

28 A. Came in front of the store.

29 (Mr. Carter gets blowup of photograph out.)

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1 Q. Do you know if that is your vehicle there?

2 A. That's my vehicle there.

3 Q. Do you know who these other two vehicles belonged
4 to?

5 A. That one to the left here is Ms. Tardy's, but I
6 don't know who that one right there belonged to.

7 Q. Was that there when you got there or came after you
8 got there?

9 A. I think it came after I got there.

10 Q. Did you see any other vehicles parked in the area
11 when you got there?

12 A. It was some vehicles parked there when I got there.

13 Q. Okay, did you see a brown Pontiac?

14 A. No, sir. I did not.

15 Q. Were there other cars parked on the other side of
16 the island?

17 A. It was some, just like those people that park at
18 the cleaners and stuff; on those other pictures, they are
19 parked up there.

20 Q. As far as persons walking around, did you see
21 anybody walking around there by Tardy's other than, I guess
22 Mr. Jones?

23 A. No, sir. I didn't.

24 Q. How long were you there before Mr. Matthews and the
25 other people got there if you recall?

26 A. It was, it was a while because they had to, I think
27 they had to drive from Greenwood. It was a pretty good
28 while.

29 Q. Did you have anybody come from your department?

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1 A. Yes, sir, one officer.

2 Q. Who came?

3 A. Officer Townsend.

4 Q. Was he the only one?

5 A. He were the only two working that morning.

6 Q. Okay. Do you know whether or not he made a
7 statement?

8 A. I don't think he did. I wouldn't know.

9 Q. You wouldn't know, okay. Now I know you can't be
10 sure, but if you can, tell me as best you can how long it
11 took somebody else from the Mississippi Department of Patrol
12 or Mr. Evans -- I'm sorry, Mississippi Highway Patrol or
13 Mr. Evans to get there? In other words, how long were you
14 and Mr. Townsend there by yourself before some other police
15 officers got there?

16 A. Okay, when I drove up, it was shortly after that
17 Sheriff Thornburg drove up. He was the second one drove up.
18 You know, he got there before my officer did.

19 Q. Okay. How long were you there before Mr. Thornburg
20 got there if you remember?

21 A. It wasn't but a couple of minutes.

22 Q. A couple of minutes. Now when you walked out of
23 that store, you went to your patrol car, and you radioed for
24 other people. Were you able to position yourself in a manner
25 that you could determine whether anybody left any of the
26 exits from the store?

27 A. When I was at the vehicle, no. After I did all the
28 calling and all that, then I got to the corner of the
29 building until, you know, some of the rest of them started

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1 driving up.

2 Q. Now where are exits and entrances to this building
3 if you recall?

4 A. You are going to have, on that side picture they
5 showed where Carrollton Street was.

6 Q. Uh-huh.

7 A. It's an exit there and it's an exit in the front.
8 On the side that the cleaners on.

9 Q. Okay. And there is an entrance in?

10 A. In the front.

11 Q. Exit in the front. That's the only two that you
12 know of?

13 A. That's the only two I know of.

14 Q. So when you positioned yourself so that you could
15 see both exit ways, where were you standing? Was it on the
16 corner?

17 A. I was at the vehicle on the corner there.

18 Q. And at what point did you put up the tape -- the,
19 what do you call the tape that you put up to block the area
20 off?

21 A. We started putting that up after MedStat left.

22 Q. After MedStat left?

23 A. Yes, sir.

24 Q. So you went back in the building the second time.
25 Was Mr. Jones back from Coast to Coast to where you were?

26 A. Yes, sir. He had walked down there.

27 Q. So you and Mr. Jones went back in the store. Was
28 anybody else with you?

29 A. I believe Sheriff Thornburg was.

Johnny Hargrove - CROSS

1 Q. Sheriff Thornburg, okay. How long did y'all stay
2 at the store that time if you recall?

3 A. At that time we stayed in the store until they got
4 Stewart up and took him out, and then we started, then we
5 started securing the crime scene.

6 Q. So you went back out; okay?

7 A. Yes, sir.

8 Q. Now when the EMT's came, were you and Mr. Thornburg
9 and Mr. Jones already in there, back into Tardy's?

10 A. We went in there; when they came, we went back in
11 there with them.

12 Q. Okay, so upon your second time going into Tardy's,
13 it was you, Mr. Jones, Mr. Thornburg and the EMT's?

14 A. Two EMT's and Barry Eskridge.

15 Q. Two EMT's and Barry Eskridge?

16 A. Yeah, Barry is the owner. He was with them. He
17 came.

18 Q. So it was six of y'all?

19 A. Yes, sir.

20 Q. If you know, who was the first person to notice the
21 footprints impression?

22 A. I did.

23 Q. And where were you positioned at that time?

24 A. Standing back there by the counter.

25 Q. And what body were you nearest?

26 A. Stewart and Ms. Rigby.

27 Q. And at the time you saw the impression, what did
28 you do or say, the first time you saw it?

29 A. I started telling the others that there was a

Johnny Hargrove - CROSS

1 bloody shoe print over there.

2 Q. And at that time you protected the area; is that
3 correct?

4 A. Yes, sir.

5 Q. And you didn't make any photographs?

6 A. I might have did. I can't recall.

7 Q. Did you take some of your tape and tape the
8 footprint area off?

9 A. I made sure didn't nobody walk over there by it.

10 Q. Okay, but you didn't tape it off?

11 A. No, sir.

12 Q. And did you leave the area where the footprint was?

13 A. Sir?

14 Q. Did you leave the area where the footprint was
15 before Melissa Schoene got there?

16 A. No. That was after all of us went back out, and
17 we started roping it all off and waiting on the
18 investigators.

19 Q. Okay. I just want to be clear and the jury to be
20 clear. Did you see the footprint the second time you went in
21 or the third time you went in?

22 A. It was the second time I went in.

23 Q. So after that second time, you and all six people
24 came back outside again? Is that what happened?

25 A. Yes, sir.

26 Q. And you didn't go back in again until who was
27 there?

28 A. We started -- so many people started gathering
29 around, so we started trying to keep the folks away from the

Johnny Hargrove - CROSS

1 front of the store. And that's why we had to rope it off so
2 far, you know, to keep the people away from the store. And
3 we were busy doing that, you know, until--

4 Q. --Do you have-- are you finished?

5 A. Yes, sir.

6 Q. Do you have any idea how long it took Ms. Schoene
7 from the crime lab to get there?

8 A. Seemed like a lifetime.

9 Q. Several hours, wasn't it?

10 A. Yes, sir.

11 Q. And from the time you came back out that second
12 time, do you know if anybody else went back in there before
13 Ms. Schoene got there?

14 A. I don't think so. No, sir.

15 Q. You don't think so?

16 A. No, sir.

17 Q. Now with respect to checking, I believe you said
18 earlier that you could tell it was a tennis shoe imprint?

19 A. It was different from all of ours.

20 Q. I'm sorry?

21 A. It appeared to be a tennis shoe imprint. It was
22 different from all of our shoes.

23 Q. Right. But you wasn't sure at that time what kind
24 of shoe had left it; is that correct?

25 A. No, sir.

26 Q. Now whose shoes did you check to make sure that it
27 didn't comply with the track, if any?

28 A. I checked the two EMT's. They had on a boot like
29 shoe and Barry's and then Mr. Jones.

Johnny Hargrove - CROSS

1 Q. Did you check Mr. Thornburg?

2 A. He had on -- he didn't have on those type shoes
3 either. His were different.

4 Q. But you didn't know what kind of footprint -- did
5 you look under his shoe to see what kind of impression it
6 would leave?

7 A. Yes, sir. It wasn't like that one.

8 Q. So you are telling me you did look at Mr.
9 Thornburg--

10 A. I looked at his shoes. They weren't like that.

11 Q. Okay. Did Mr. Matthews get there before
12 Ms. Schoene did?

13 A. I believe he did. Yes, sir.

14 Q. And Mr. Matthews also had another gentleman with
15 him, I believe; is that correct?

16 A. Yes, sir.

17 Q. And neither Mr. Matthews or the other officer with
18 the Mississippi Highway Patrol went in the building before
19 Ms. Schoene got there; is that correct?

20 A. When they got there, they started -- I believe they
21 did.

22 Q. You believe they went in?

23 A. Yes, sir.

24 Q. But you didn't go in with them?

25 A. Yes, sir. I went back in there.

26 Q. You went back in with them?

27 A. Yes, sir. I was showing them the print.

28 Q. So now we know if you count Mr. Matthews and the
29 other gentleman that was with him, that would have been eight

Johnny Hargrove - CROSS

1 people that went in the building before Ms. Schoene got
2 there?

3 A. Yes, sir.

4 Q. And do you know if anybody else other than those
5 eight went into the building before Ms. Schoene got there?

6 A. No, sir.

7 Q. Now the time that you were there, you didn't see
8 anybody running down Vine or on Carrollton or any place near
9 Tardy's; is that correct?

10 A. No, sir.

11 Q. I know you may not know this, but is it your
12 position that whoever committed the crimes were apparently
13 gone before you got there?

14 A. Sir, just like I say, I didn't see anybody leave
15 there.

16 Q. And as far as you know, there is no evidence that
17 somebody came out while you were there; is that correct?

18 A. Just like I said, I didn't see anybody.

19 Q. Now you said the glasses you saw in one of the
20 photographs belonged to Ms. Tardy. Do you know that for a
21 fact or are you just, that was the impression you got?

22 A. It was beside the victim.

23 Q. Okay. Do you remember the name of the EMT that
24 went in other than Mr. Eskridge?

25 A. One of them was from Jackson, and the other one,
26 Story. And I know Story because he was in the Guard. But
27 the other one, he was one of the new ones from Jackson. I
28 don't know him.

29 Q. Now during the time you were at the crime scene,

Johnny Hargrove - CROSS

1 especially with respect to where the bloody footprints were
2 located, do you know if that area, that particular area, was
3 it ever roped off by anyone?

4 A. I don't, I can't recall.

5 Q. Now I believe you know the Flowers; is that
6 correct?

7 A. Yes, sir.

8 Q. You also knew Mr. Golden, I believe; is that
9 correct?

10 A. Yes, sir.

11 Q. Did you know the other victims?

12 A. Yes, sir. I didn't know Stewart too well.

13 Q. Now Chief, wasn't there a reward eventually posted
14 in buildings and run in newspapers with respect to finding
15 anybody, I guess, that had information about this particular
16 crime or these crimes?

17 A. Yes, sir.

18 Q. Now you saw it in the paper?

19 A. Sir?

20 Q. Did you see an ad like that run in the papers?

21 A. I didn't see one in the paper, no.

22 Q. What do you see?

23 A. I just seen a poster.

24 Q. A poster. Where did you see it?

25 A. Down at the station.

26 Q. And do you know if it was posted in other places
27 other than the station or not?

28 A. Not really right off.

29 Q. I'm sorry?

Johnny Hargrove - CROSS

1 A. I don't know if it was or not. You know, I seen
2 them at the station when they were made up.

3 Q. How much was that reward; do you recall?

4 A. I think it had, I think 30,000, I think.

5 Q. Now I think you told me you didn't talk to any
6 witnesses or interview any witnesses. Were you present when
7 other people interviewed witnesses?

8 A. No, sir.

9 Q. Did you have anything to do with that reward being
10 posted?

11 A. No, sir.

12 Q. Chief Hargrove, can you tell me whether you saw
13 these people I'm about to name at the crime scene: Danny
14 Fielding?

15 A. Danny Fielding. Like I said, it was lots of people
16 there.

17 Q. I understand.

18 A. I can't recall.

19 Q. I understand. I just wanted to find out if you
20 remember these particular people. Wayne Miller?

21 A. Wayne, he was there.

22 Q. Okay, I know you saw Jack Matthews.

23 A. Yes, sir.

24 Q. What about Eddie Robinson?

25 A. Eddie Robinson, yes, sir.

26 Q. What about a Tommy Purnell?

27 A. Tommy, I believe he was there.

28 Q. What about R.V. Miller?

29 A. I don't know.

Johnny Hargrove - CROSS

1 Q. Okay, now Mr -- strike that. What about Jerry
2 Bridges?

3 A. Jerry, he might have been there.

4 Q. Rudolph Hobbs?

5 A. He might have been there too. Just like I said,
6 when I called for backup, lots of people usually come.

7 Q. Yeah, I understand. What about L.C. Smith?

8 A. L.C., I believe he was.

9 Q. What about Calvin Young?

10 A. Calvin? He might have been; I don't know. I don't
11 recall seeing him.

12 Q. What about a Barney, Burney Morgan?

13 A. I don't know if he was there or not.

14 Q. What about a Tommy Bibbs?

15 A. Tommy, he might have been there.

16 Q. What about a Michael Herring?

17 A. Michael, he might have been there too.

18 Q. Did the Mayor come there? Sonny Simmons? Do you
19 remember seeing him?

20 A. I can't recall seeing him.

21 Q. What about a Vincent Small?

22 A. He might have been there too.

23 Q. Did Vincent work for you?

24 A. Yes, sir.

25 Q. Do you remember seeing John Johnson?

26 A. John, yes, sir.

27 (Counsel gets blowup of photograph in front of
28 Tardy's store.)

29 Q. I don't guess I asked you this before. I think I

Johnny Hargrove - CROSS

1 asked somebody else. But do you know who these people are
2 right here? Right here? I will turn it around a little bit.

3 A. I can't place. I can't see them.

4 Q. Other than you, did you see anybody else checking
5 for shoe prints to make sure that--

6 A. Barry was.

7 Q. Barry?

8 A. Eskridge.

9 Q. Okay. And who does he work for?

10 A. MedStat. He owned MedStat.

11 Q. And whose feet did he check?

12 A. He was looking at the EMT's. He was with me when
13 we were looking at them.

14 Q. Did he check anybody's feet other than EMT's?

15 A. The EMT's?

16 Q. Uh-huh.

17 A. I don't know; I can't recall. I know he was there
18 when I was looking at those other people's footprints.

19 Q. Okay, what I'm trying to find out-- I guess I can
20 be specific. Now Mr. Eskridge, is he a police officer?

21 A. No, sir.

22 Q. Now you didn't see him checking anybody's feet
23 other than, I guess, his employees. You didn't see him
24 checking -- other than his employees, did you see him check
25 anybody else's?

26 A. No, sir.

27 Q. Do you recall seeing anyone -- strike that. Did
28 you make a written list of people who was at the crime scene?

29 A. No, I did not.

Johnny Hargrove - CROSS

1 Q. Did you see anybody else do so?

2 A. No, sir. I didn't.

3 Q. At what point do you contend you released the crime
4 scene to Mr. Matthews or to the crime lab?

5 A. Just after they got there.

6 Q. As soon as they got there?

7 A. Yes, sir.

8 Q. So did you release it to Mr. Matthews, or did you
9 release it to Ms. Schoene and her group?

10 A. They were all -- really I released it to both of
11 them.

12 Q. So both had gotten there by the time you did?

13 A. What I'm saying, I released it to both of them when
14 they started -- she started doing what she was doing, and
15 Mr. Matthews started what they were doing.

16 Q. Did you leave at that time, or you stayed around?

17 A. I stayed around.

18 BY MR. CARTER: One moment; I think I am
19 finished.

20 BY MR. CARTER:

21 Q. Now you know Doyle Simpson and Emmitt Simpson; is
22 that correct?

23 A. Yes, sir.

24 Q. What is their complexion?

25 A. Kind of in between a light and dark, sort of.

26 Q. Lighter than me. I don't consider myself light, by
27 the way, but lighter than me?

28 A. About the, about, a little, about the same.

29 Q. Okay. Certainly lighter than Mr. Flowers; is that

Johnny Hargrove - CROSS - REDIRECT

correct?

A. Yes, sir.

Q. And you wouldn't consider Mr. Flowers to even be -- I don't mean -- well, Mr. Flowers' complexion is not really considered light in your view, is it?

A. It's just like I said, Doyle and them, it's lighter than he is.

Q. But what would you, how would you describe Mr. Flowers' skin texture? Light? Dark?

A. Dark complected.

BY MR. CARTER: Thank you. No further questions.

REDIRECT EXAMINATION BY MR. EVANS:

Q. Very briefly, Chief. Did you check everybody's shoes that was in there?

A. Yes, sir.

Q. And did you see to it that those prints were not disturbed?

A. Yes, sir. I did.

Q. Now the list of names that Defense Counsel ran through, a couple of those I didn't know. Were most of those folks law enforcement officers?

A. Yes, sir.

Q. Where did most of those folks come to, outside or inside?

A. They were mostly outside. Just like I said, the crowd started coming from everywhere, and I needed peoples out there to keep them back, and they were helping me, most of them outside.

Q. And Melissa Schoene, she was the crime scene expert

Johnny Hargrove - REDIRECT
1 that came up; is that correct?

2 A. Yes, sir.

3 Q. Were you present while she was recovering evidence
4 on the inside?

5 A. Yes, sir.

6 BY MR. EVANS: That's all we have of this
7 witness, Your Honor.

8 BY THE COURT: You may step down, Chief.

9 WITNESS LEAVES THE COURTROOM.

10 BY THE COURT: Ladies and gentlemen, it is ten to
11 12:00. We are going to take the break now. I don't
12 think we can get another witness on before lunch. I'm
13 going to turn you over to the bailiffs. I'm going to
14 give you some instructions that I will give you at
15 every break. I will get repetitive about this, but I
16 want to make sure you understand them.

17 You are still not to discuss this matter amongst
18 yourselves, nor are you to form any opinions about
19 this matter because you have not heard all the
20 evidence at this time nor have you gotten my
21 instructions on the law.

22 One other thing I want to tell you that I meant
23 to tell you at the first this morning, and I frankly
24 just forgot about it, is as you know by now, we have
25 media coverage from the television and photography.
26 Under the new rules passed by the Supreme Court, that
27 is admissible. This is, however, the first time it
28 has been done in this district. But part of the
29 rule--what the rules say is that none of these, the

Barry Eskridge - DIRECT

1 cameras cannot be focused on you. So none of you will
2 have your pictures taken of this, and they can only
3 take pictures of the proceedings and also can only do
4 it in accordance with the guidelines that I have laid
5 down, which they have done to this point in time. But
6 y'all needed that information. I wanted to let you
7 know.

8 I will turn you over to the bailiffs for lunch,
9 and we will start back probably about 1 o'clock.

10 (FOLLOWING THE NOON RECESS ON FEBRUARY 6, 2004,
11 TESTIMONY CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
12 DEFENDANT, AND THE JURY ALL PRESENT:)

13 **BARRY ESKRIDGE,**

14 a white male called to testify as a witness by the State of
15 Mississippi, having first been duly sworn, testified as
16 follows, to-wit:

17 **BY THE COURT:** State your name, please.

18 **BY THE WITNESS:** Barry Eskridge.

19 DIRECT EXAMINATION BY MR. HILL:

20 Q. Mr. Eskridge, would you tell us how you are
21 employed, sir?

22 A. I am the owner of Medstat Ambulance Service.

23 Q. And how long have you been in that occupation?

24 A. In the occupation, in the ambulance occupation,
25 approximately twenty-two years.

26 Q. Could you tell us whether or not you have a
27 business here in Winona?

28 A. Yes, sir. I do.

29 Q. And how long have you operated that business?

Barry Eskridge - DIRECT

1 A. Since January of 1996.

2 Q. And I take it by your answer then, you were working
3 in that field in July of 1996?

4 A. Yes, sir. I was.

5 Q. Specifically, Mr. Eskridge, were you so employed on
6 July the 16th, 1996?

7 A. Yes, sir. I was.

8 Q. Can you tell us whether or not you had some medical
9 personnel working under your supervision on that date?

10 A. Yes, sir. I did.

11 Q. And could you tell us their names, please?

12 A. I believe it was Bruce Story and Bo Owens or James
13 Owens.

14 Q. I want to ask you, if you will, sir, to speak up
15 just a little bit. That microphone doesn't amplify your
16 voice, I don't think. Do you recall anything of interest
17 that occurred that morning on July the 16th, 1996?

18 A. Yes, sir. We responded to a call at Tardy
19 Furniture store on Front Street in Winona.

20 Q. Okay, and do you recall exactly what time that was?

21 A. It was approximately 10:20, 10:21 that morning.

22 Q. All right. Were you yourself the first of your
23 crew to arrive?

24 A. No, sir.

25 Q. Would you explain when you arrived what you saw?

26 A. When I arrived on the scene, my ambulance crew,
27 they-- we both left at the same time headed to the call.
28 They just got there about a minute before I did, but the
29 driver was coming out of the front door of the store to

Barry Eskridge - DIRECT

1 retrieve the stretcher from the ambulance as I was
2 approaching the store. I helped him get the stretcher, and
3 we went into the store.

4 Q. Now what was the name of the place what you went to
5 that morning?

6 A. Tardy Furniture store.

7 Q. And just for the record, would you tell us, please,
8 the city, the county, and the state where you arrived, where
9 you went that morning?

10 A. Winona, Mississippi. Montgomery County.

11 Q. Mr. Eskridge, what did you observe when you walked
12 into the store?

13 A. When I walked into the store, my paramedic was
14 standing beside one of the victims. I believe it was BoBo
15 Stewart. Chief Johnny Hargrove was there with him as well,
16 and they were both there with the victims.

17 Q. What, if anything, could you tell us about the
18 condition of Mr. Stewart when you first observed him?

19 A. He was lying supine, flat on the floor. He was
20 breathing, but he was unconscious. He was lying with a pool
21 of blood around his head.

22 Q. So you say he was breathing?

23 A. Yes, sir.

24 Q. And what is your medical training, sir?

25 A. I'm a paramedic.

26 Q. If he was breathing, then that would mean he was
27 alive; is that right?

28 A. Yes, sir.

29 Q. Did you, I think you said he was unconscious?

Barry Eskridge - DIRECT

1 A. Yes, sir; he was.

2 Q. Did you notice anything about the wounds on his
3 body? Could you tell, for instance, what part of the body,
4 if any, there was a wound?

5 A. Yes, sir. He had a wound to his hand, and I don't
6 recall which hand it was, a through and through wound to the
7 hand, and then a wound, looked an entrance wound to the,
8 almost between his eyes. And I believe there was an exit
9 wound to the, to the rear of his head.

10 Q. So the place that he was bleeding from--

11 A. Yes.

12 Q. -- most would be from the head?

13 A. Profusely. Yes, sir.

14 Q. Did you notice anything of interest -- now let me
15 ask another question first. Besides Mr. Stewart, who else
16 did you see in the store?

17 A. Yes, sir. I noticed just a few feet from
18 Ms. Stewart was a white female that was lying supine, just
19 two or three from her. To one side was a black male, and on
20 further down the aisle toward the back of the store was a
21 white female.

22 Q. Did you know any of them by name?

23 A. The only one that I knew was Bertha Tardy. I did
24 not know any of the other victims.

25 Q. And one of the victims that you have described, was
26 that Ms. Tardy?

27 A. Yes, sir.

28 Q. And what did you, what did you do when you saw that
29 Mr. Stewart was still breathing?

Barry Eskridge - DIRECT

1 A. We were beginning our treatment with him, clearing
2 his airway. He was gurgling on some blood in his mouth. We
3 were trying to get him in a position to where he was not
4 aspirating or swallowing or inhaling the blood. We almost
5 immediately removed him from the floor, got him on an
6 ambulance stretcher, and took him out to the ambulance to be
7 transported to the hospital.

8 Q. When you first approached Mr. Stewart, what, if
9 anything, around him did you notice that you thought might be
10 of interest to law enforcement personnel?

11 A. When we first approached the body, we or I
12 noticed -- I don't know if they had recognized it. No one
13 had said anything, but I noticed that there were some
14 footprints that appeared to be made in blood just a few feet
15 from the body, and there was an unspent cartridge lying there
16 in that vicinity as well.

17 Q. Mr. Eskridge, can you tell us whether or not you
18 were the only one that was aware of the presence of the
19 footprint a few feet from Mr. Stewart's body?

20 A. At the time I verbalized that it was there, no one
21 had mentioned it. I don't know if they had seen it or not,
22 but as soon as I saw it, which was within seconds of us
23 approaching the body, I identified it and pointed it out to
24 Chief Hargrove, and I instructed all of my people not to go
25 near it, not to disturb it or tamper with it in any way. And
26 no one did.

27 Q. And from the time that you entered the store, can
28 you tell us of your own personal knowledge whether any of
29 your personnel or anybody else that you saw went in the area

Barry Eskridge - DIRECT

1 of where you saw those foot tracks?

2 A. Not to my knowledge.

3 Q. So none of your people were over there?

4 A. No, sir.

5 Q. Would you allow me, please -- may I approach the
6 witness, Your Honor?

7 BY THE COURT: Yes.

8 BY MR. HILL:

9 Q. Mr. Eskridge, I'm going to show you State's Exhibit
10 number 13. Would you take a look at that, please. Do you
11 recognize that photograph, what it shows?

12 A. Yes, sir.

13 Q. Tell us what that is, sir.

14 A. This is a photograph of the scene after we removed
15 Mr. Stewart. It shows the white female, the black male, and
16 the spot where Mr. Stewart was and the blood that was
17 surrounding him.

18 Q. Did you take any measures to ascertain whether or
19 not you or either of your two ambulance personnel had stepped
20 in the blood and made those tracks?

21 A. Yes. I did.

22 Q. Tell us what you did, sir.

23 A. What we -- obviously, we recognized that it was
24 there. One of the highway patrol investigators -- I believe
25 it was Mr. Miller -- contacted me just within minutes of us
26 leaving the scene going to the hospital and asked us to
27 remove any shoes or anything that we had, and he wanted to
28 have access to our shoes to make sure that it wasn't any of
29 ours. And we all immediately, I think we all took our shoes

Barry Eskridge - DIRECT - CROSS

1 off, and he came and observed and looked at them, and we
2 looked at them to make sure there was no blood on them or
3 that it appeared that we made the tracks. And from what we
4 observed and observing the actual print, which was fairly
5 clear to see, it didn't match any of our footwear.

6 Q. So you not only looked at your own, but you looked
7 at the shoe wear of both of your employees?

8 A. Yes, we did.

9 Q. And sir, are you satisfied that while you were
10 present there, neither you nor either of them or anybody else
11 that you saw stepped in the blood or made those tracks over
12 there?

13 A. Yes. I am positive of that.

14 Q. Thank you, sir.

15 BY MR. HILL: Your Honor, I believe that would be
16 all the questions I would have for this witness.

17 CROSS-EXAMINATION BY MR. CARTER:

18 Q. How are you doing, Mr. Eskridge?

19 A. Fine.

20 Q. Now I just want to be clear on something. At the
21 scene at Tardy's Furniture store no one checked your shoes
22 there; is that correct?

23 A. That's correct.

24 Q. And with respect to your two EMT's, no one checked
25 their shoes at Tardy's; is that correct?

26 A. That's correct.

27 Q. So you took your shoes off at some other place so
28 they could be, I guess reviewed, for lack of a better word,
29 or observed?

Barry Eskridge - CROSS

1 A. Yes, sir.

2 Q. Where was this, this other place?

3 A. We, we first realized that we needed to review the
4 shoes, I guess, at the hospital just a few minutes after we
5 had transported him there. And I believe everybody just kind
6 of looked at them to make sure that there was no blood or
7 anything on it there. And if I'm not mistaken, I believe one
8 of the highway patrol investigators came to the ambulance
9 station afterwards and observed them, and I don't recall
10 exactly the sequence of events there. But they were looked
11 at, and I think to their satisfaction; it was pretty clear
12 that it wasn't from any of our shoes.

13 Q. Okay, I'm not really from here, so what hospital
14 would that have been?

15 A. Tyler-Holmes Hospital.

16 Q. And where is it located?

17 A. Tyler-Holmes Drive. Approximately a mile from the
18 location of the Tardy's Furniture store.

19 Q. So you left the hospital, and you went back to your
20 business; is that correct?

21 A. Yes, sir.

22 Q. And was your business located back then where it's
23 located now?

24 A. No, sir. It's not.

25 Q. Okay, where were you located back then?

26 A. It was located at the time next to the Greyhound
27 bus station, which for your reference is next to, near the
28 intersection of Summit Street and Highway 51.

29 Q. Okay.

Barry Eskridge - CROSS

1 A. Basically between the hospital and the scene of the
2 incident.

3 Q. I apologize if I wasn't listening well, but someone
4 from the Mississippi Highway Patrol came and checked the
5 shoes at MedStat, I believe you said earlier; is that
6 correct?

7 A. I believe they did. I'm not exactly certain
8 because the ambulance crew, if I'm not mistaken, transported
9 Mr. Stewart to Jackson. And there was -- I don't recall
10 whether he checked them at the hospital. He came -- I do
11 know that he came by the ambulance station and spoke to me,
12 but I don't recall if they were there at that time or he
13 waited until they got back or saw them beforehand or not.
14 But at that time there was a lot going on, and they were
15 trying to investigate, and we were involved in the patient
16 care.

17 Q. And is it your testimony that whoever the highway
18 patrolman was, he checked the shoes for blood?

19 A. That's my understanding.

20 Q. Is that what -- that's your understanding, okay.
21 Do you know if he checked for any other reason?

22 A. I believe from what I understand, they were looking
23 at the patterns on the bottom of the shoes to see if they
24 were similar to the pattern that were on the floor as well as
25 to see if there were any blood or any obvious signs that we
26 may have made those tracks.

27 Q. Okay, was the pattern or impression from the bottom
28 of your shoe mentioned specifically to you?

29 A. I don't recall if that was mentioned specifically

Barry Eskridge - CROSS

1 by the investigator or between us, but one of the things that
2 stuck out in my mind was several of us -- our shoe, the
3 pattern that was on the floor was a pattern, and several of
4 our boots were slick bottom boots. There was no pattern on
5 it, and it was pretty quickly realized that it could not have
6 been made from us because there was no pattern on the bottom
7 of our shoes to make a pattern.

8 Q. Okay, and all three of you had on boots the best
9 you can recall? Is that correct?

10 A. I cannot say that; I'm not sure. I know I did, and
11 I believe the paramedic did. But I'm not sure about the EMT.

12 Q. Now when you saw this shoe print impression at
13 Tardy's, were you able to determine what kind of shoe left it
14 at that time?

15 A. No, sir. No, sir.

16 Q. How many people did you see go into Tardy's during
17 the period of time you were there, and name them if you can?

18 A. During the period that I was there, and I guess to
19 let you know what I did after the fact; I assisted the
20 ambulance crew with taking the patient to the ambulance, and
21 they began transporting to the hospital. At that time the
22 only law enforcement personnel there was Chief Johnny
23 Hargrove, and I stayed there with him to do a search of the
24 building to make sure that there was no one that we had
25 missed, and to also help him secure the building because
26 there were people starting to gather around the front of the
27 building. And there were several entrances, and he was
28 concerned that there were going to be people coming in and
29 out. And just as soon as the other law enforcement agencies

Barry Eskridge - CROSS

1 got there, I left after they had taken control. But the only
2 ones in the building when I was there was Chief Johnny
3 Hargrove, my two EMT's, and I believe the gentleman that
4 worked at Tardy's. I think his name was Sam, if I'm not
5 mistaken.

6 Q. Are you a police officer or deputy also?

7 A. No, sir.

8 Q. And during the time you were in the store, did you
9 hear any sounds or see anything that would imply that
10 somebody else might have still been in the building?

11 A. No, sir.

12 Q. And during the time you were in the building with
13 Chief Hargrove and your EMT's had left, did y'all actually
14 check to see if somebody else was in the building?

15 A. Yes, we did. I was concerned that there may be
16 some other victims in the store, and we were looking. We did
17 a sweep of the store just to make sure that there was no one
18 there that we had missed.

19 Q. Okay, thank you. Now I have heard a word a couple
20 of times called "gurgling," and I might as well admit my
21 ignorance and tell you that I don't really know what it
22 means. What does it mean?

23 A. Basically, there is blood in this situation or
24 fluid in the mouth, and the person is trying to breathe. It
25 is making a gurgling sound just as you may make when you are
26 gargling or something to that effect.

27 Q. Okay, now when you arrived at Tardy's, I believe
28 your employee Sam or maybe Mr. Jones was standing in the
29 doorway; is that correct?

Barry Eskridge - CROSS

1 A. When I arrived, he wasn't. The ambulance crew had
2 already entered. He may have been there when they got there,
3 but when I arrived, he was not.

4 Q. Okay, now Bruce was coming out of that store to get
5 a stretcher, I believe?

6 A. That's correct.

7 Q. And Bruce gave you some idea what happened?

8 A. Yes.

9 Q. Now prior to your noticing the shoe print
10 impressions, had anybody told you that there might have been
11 shoe print impressions in the store?

12 A. No.

13 Q. How many footprints did you see?

14 A. There were several. There was, there were, if I
15 can remember correctly, there were a couple of prints right
16 near the body. If my memory serves me correctly, I believe
17 that the prints actually -- they were fading prints as
18 someone walked away from the bodies.

19 Q. When you say somebody walked away, correct me if
20 I'm wrong, but I believe if I may paraphrase, you are saying
21 that the blood went from thick to thinner?

22 A. Yeah. As you would wear it off your shoes as you
23 walked.

24 Q. And what else did you see besides footprints? Did
25 you see any other evidence laying around?

26 A. There were several spent bullet casings lying
27 around, but what caught my attention was an unspent cartridge
28 that was lying on the ground beside -- actually I think it
29 was lying between the body and one of the footprints.

Barry Eskridge - CROSS - REDIRECT

1 Q. What happened to that?

2 A. I think Chief Hargrove kind of quarantined the area
3 where it was all around, and they were waiting on the crime
4 scene unit to arrive, and I left before anyone did anything
5 with it. But it was still there, and he was guarding it.

6 Q. Did you at any point see anybody tape the area off
7 where the footprints were located?

8 A. No, sir. I left before any of those people got
9 there.

10 Q. How long were you there?

11 A. Probably a total of 15 to 20 minutes maybe, and
12 that would be a rough guess.

13 BY MR. CARTER: One moment, your Honor.

14 (Defense Counsel confer.)

15 BY MR. CARTER: We tender, Your Honor.

16 REDIRECT EXAMINATION BY MR. HILL:

17 Q. Mr. Eskridge, just a couple more questions. You
18 were asked if your footwear and the footwear of your
19 employees was checked by the investigators for blood. Was
20 any blood found on your footwear or the others?

21 A. Not to my knowledge. No one informed me they did,
22 and I didn't observe any.

23 Q. Second, you were able to see with your own eyes the
24 bloody footprint in the store that--

25 BY MR. CARTER: -- Object to the leading.

26 BY MR. HILL:

27 Q. Were you able to see the design on the footprint in
28 the store that you, the footprint that you testified about?

29 A. Yes, sir.

Eskridge - REDIRECT Hayne - DIRECT

1 Q. Did you observe the bottom of your shoes and the
2 bottom of the shoes of your two employees?

3 A. I did.

4 Q. Was there any similarity whatsoever--

5 BY MR. CARTER: --I object--

6 BY MR. HILL:

7 Q. --as to the track or design?

8 BY MR. CARTER: I object.

9 BY THE COURT: Overruled.

10 BY THE WITNESS:

11 A. No, sir. None at all.

12 BY MR. HILL: No further questions, Your Honor.

13 BY THE COURT: Is he finally excused?

14 BY MR. CARTER: Yes, sir.

15 BY THE COURT: Mr. Eskridge, you are free to go.

16 Who do you have next?

17 BY MR. EVANS: Dr. Hayne.

18 WITNESS EXCUSED

19 DR. STEVEN TIMOTHY HAYNE,

20 a white male called to testify as a witness by the State of
21 Mississippi, having first been duly sworn, testified as
22 follows, to-wit:

23 BY THE COURT: State your name, please.

24 BY THE WITNESS: Steven Timothy Hayne, Your
25 Honor.

26 DIRECT EXAMINATION BY MR. EVANS:

27 Q. Dr. Hayne, how are you employed?

28 A. I work as a pathologist in the fields of anatomic,
29 clinical and forensic pathology. I work as the senior

Dr. Steven Hayne - DIRECT

1 pathologist at Rankin Medical Center. I work as a state
2 pathologist for the Department of Public Safety, Medical
3 Examiner's Office for the State of Mississippi. And I also
4 work as the Medical Director of the Renal Laboratories, and I
5 also do some work in the forensic field of pathology for
6 parishes in the State of Louisiana.

7 Q. Dr. Hayne, would you tell the ladies and gentlemen
8 of the jury just a little bit about your educational and work
9 experience background.

10 A. I graduated from medical school at Brown
11 University. I did my pathology training at Letterman Army
12 Medical Center at the Presidio of San Francisco with
13 rotations at different institutions in the San Francisco Bay
14 area including Children's Hospital, the Erwin Memorial Blood
15 Bank, the Medical Examiner's Office, City and County of San
16 Francisco. I went to two duty stations in the army, first as
17 chief of pathology and physician consultant to preventive
18 medicine at Fort Leavenworth, Kansas at Munson Army Hospital.
19 And then I was transferred to a second duty station at Fort
20 Campbell, Kentucky, at Blanchfield Army Hospital where I was
21 chief of pathology. I worked two years in the Shoals Medical
22 Laboratories, and I have been in the State of Mississippi
23 since that period, for almost 18 years now.

24 Q. Okay. Dr. Hayne, as part of your duties in
25 relationship to forensic pathology, do you have an occasion
26 to do autopsies?

27 A. I do, both in the capacity as a forensic
28 pathologist but also in non-forensic cases as a general
29 anatomic pathologist.

Dr. Steven Hayne - DIRECT

1 Q. And Dr. Hayne, based upon your experience and your
2 training, have you had an occasion to do autopsies not only
3 in the State of Mississippi, but in this particular district
4 wherein you have testified as an expert and been classified
5 as an expert in the field of forensic pathology?

6 A. Yes, sir.

7 Q. Can you give us a rough idea of approximately how
8 many times?

9 A. Yes--

10 BY MR. CARTER: We stipulate, Your Honor, to his
11 expertise, unless he wants to ask those questions.

12 BY MR. EVANS: Your Honor, we will accept the
13 stipulation that Dr. Hayne is an expert in the field
14 of forensic pathology.

15 BY THE COURT: The Court accepts him as an expert
16 in that field.

17 BY MR. EVANS:

18 Q. Dr. Hayne--

19 BY THE COURT: -- Excuse me just a minute.

20 (A cup of water is handed to the witness.)

21 BY THE COURT: All right.

22 BY MR. EVANS:

23 Q. Dr. Hayne, can you tell us just a little bit about
24 what a forensic pathologist does in relationship to an
25 autopsy, specifically in a case like this?

26 A. During the performance of an autopsy, there are
27 several steps that are undertaken; the first of which is not
28 looking at the body, the remains of the decedent, but
29 actually discussing the case with the submitting officer, the

Dr. Steven Hayne - DIRECT

1 officer of jurisdiction in this state who would be from the
2 county coroner's office of jurisdiction; also, discussing the
3 case in a case such as this with law enforcement officers to
4 gain some understanding of the circumstances of the death or
5 deaths.

6 It is followed by an external examination, looking
7 at the external surfaces of the body to observe and record
8 any disease or injury that may participate in the death of
9 that individual as well as recording the other nonlethal
10 findings on the external surface of the body; recording them
11 and drawing specimens appropriate to that step of the
12 investigation. It's followed by the internal examination,
13 opening the body cavities and again looking for evidence of
14 disease or injury, whether it be new or old, and always
15 focusing on that aspect that could produce death in this
16 individual or individuals. There is evidence and
17 documentation that is collected at that step as well as other
18 steps, photographically and body diagram sheets and
19 ultimately in written form in the final autopsy protocol.

20 That is followed by additional steps, microscopic
21 review of the tissues as well as review of toxicology
22 specimens and other studies that may be appropriate. And
23 actually before that final step, there would be a discussion
24 of the case with the submitting officers, the officer of
25 jurisdiction from the coroner's office, and commonly with the
26 officer investigation of the scene which would be the law
27 enforcement officer.

28 A final written protocol is ultimately generated
29 describing the findings, those that are associated with death

Dr. Steven Hayne - DIRECT

as well as any other significant finding that is observed--

Q. All right, Dr. Hayne, let me stop you at that point for a minute. And is part of what you are attempting to determine the cause and manner of death in different cases?

A. Yes, sir. Ultimately, the pathologist has to come to a conclusion as to cause of death, the medical reason that person died, as well as the manner of death which is the classification of that death, whether it be a suicide, homicide, accident, natural, in some cases pending until additional information is gathered, and rarely, but on occasion undetermined when one cannot come to a final conclusion.

Q. All right, and Dr. Hayne, in this particular case, I believe you performed four separate autopsies; is that correct?

A. I did, sir.

Q. And three of these were done at basically the same time frame; is that right?

A. They were done on the 16th of July of the year of 1996. A fourth autopsy was conducted approximately a week later.

Q. Okay. And the ones that you performed at first, I believe were on Robert Golden, Carmen Rigby, and Bertha Tardy; is that correct?

A. That's correct, Counselor.

Q. And then the one that you did on the separate date was of Derrick Stewart?

A. Yes, sir. That was done on the 23rd of July of the year 1996.

Dr. Steven Hayne - DIRECT

1 Q. Dr. Hayne, let's start with the ones you did first.
2 Starting with Ms. Bertha Tardy, did you have an occasion to
3 examine Ms. Tardy in an attempt to determine the manner and
4 cause of her death?

5 A. I did, Counsel.

6 Q. And can you tell us before you did anything else --
7 well, let me ask it like this. When you examined the body of
8 Ms. Tardy, what did you notice about it?

9 A. She was a middle-aged Caucasian female. She
10 measured five foot, six inches in height and had a body
11 weight of 140 pounds, and she was fully clothed, Counselor.
12 There was one obvious wound consisting of a gunshot wound to
13 the head. Both entrance and exit were observed.

14 Q. Can you describe where that wound was to Ms. Tardy.

15 A. The gunshot wound was located on the right side of
16 the head. That is the entrance gunshot wound. It measured
17 approximately the diameter of a large ink pen, approximately
18 three eighths of an inch in diameter. It was located at a
19 point three and one half inches forward from the back of the
20 head, three inches below the top of the head, placing the
21 entrance gunshot wound at the top level of the right ear and
22 slightly behind the right ear.

23 Q. And how about the exit wound that you have
24 described?

25 A. The exit gunshot wound exited adjacent to the left
26 eye. It was found at a point 4 inches below the top of the
27 head, two and one half inches to the left of the mid-surface
28 of the face. There was a large irregular wound located at
29 that site, and it was located just to the left of the eye

Dr. Steven Hayne - DIRECT

lobe itself.

Q. All right, Dr. Hayne, did you in further examining the body of Ms. Tardy, discover any other wounds?

A. I did not, Counselor. That was the sole injury, a gunshot wound entering on the right side of the head exiting on the face in the area of the left eye, sir. Of course, it produced massive internal injuries to the brain.

Q. All right, sir. I will get to that in just a second.

(Mr. Evans shows photographs to Mr. Carter and Mr. de Gruy.)

Q. Dr. Hayne, I want to hand you Exhibits 57, 58, and 59, and ask if you can identify these three exhibits?

A. I can, Counselor.

Q. Starting with -- well, starting with Exhibit 57, can you tell us what that is?

A. State's 57 is a left frontal view of the face of the decedent. It shows an exit gunshot wound located to the left side of the eye, and there is bleeding around the soft tissue surrounding the left eye.

Q. Dr. Hayne, Exhibit 57, which shows the face and a wound to Ms. Tardy, does that picture truly and accurately depict that wound as you saw it on that day?

A. It does, sir.

Q. Let's go on to Exhibit 58, and tell me what it shows.

A. State's 58 shows the entrance gunshot wound located slightly above and slightly behind the right ear. The hair has been shaved to demonstrate the characteristics of the

Dr. Steven Hayne - DIRECT

entrance wound as it struck the scalp, sir.

Q. And Exhibit 59?

A. State's 59 shows the entrance gunshot wound adjacent to the right ear, and there is a calibrated ruler in the field to document the size of the entrance gunshot wound.

Q. And did that assist you in helping make your reports?

A. It does, sir. It also documents the findings photographically.

Q. Exhibits 58 and 59, do they also truly and accurately depict what you saw when you examined the body of Ms. Tardy?

A. They do, Counselor.

BY MR. EVANS: Your Honor, I offer these three exhibits, 57, 58 and 59 into evidence.

BY MR. CARTER: No objection.

BY THE COURT: Okay, let them be marked as exhibits.

(THREE SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS S-57, S-58 AND S-59 FOR IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

BY MR. EVANS: Your Honor, may I have the bailiff pass these to the jury while I proceed?

BY THE COURT: They have been admitted into evidence. You may do so.

(Exhibits S-57 through S-59 were passed to the jury.)

BY MR. EVANS:

Q. Dr. Hayne, in addition to the photographs that you

Dr. Steven Hayne - DIRECT

1 photographed what you observed, the wounds to Ms. Tardy, did
2 you make some diagrams to specifically show where these
3 wounds were located?

4 A. I did, sir, on body diagram illustration sheets,
5 and I placed the wounds, entrance and exit on those, and drew
6 lines to them from different points of the body indicating
7 the specific distances from those points to the entrance
8 gunshot wound and the exit gunshot wound.

9 Q. In these diagrams, do you also show the path of
10 travel of any projectile?

11 A. I do, sir.

12 (Diagrams shown to Mr. Carter.)

13 BY MR. EVANS:

14 Q. Dr. Hayne, I will show you Exhibit 73 and ask you
15 if this is part of your report?

16 A. It is, sir, and it actually contains a second piece
17 of information that is the ME17 form, which is a request for
18 post mortem examination, as well as a total of five body
19 diagrams sheets.

20 Q. Do those diagrams depict what your findings were on
21 this case?

22 A. They do, sir. They illustrate the sites and types
23 of injuries produced by the single gunshot wound to the right
24 side of the head.

25 BY MR. EVANS: Your Honor, I offer this exhibit
26 into evidence.

27 BY THE COURT: Any objection?

28 BY MR. CARTER: No objection.

29 BY THE COURT: Okay, can we make that a composite

Dr. Steven Hayne - DIRECT
exhibit?

BY MR. EVANS: Yes, sir.

BY THE COURT: It is admitted.

(AUTOPSY DIAGRAMS OF MS. BERTHA TARDY CONSISTING OF
5 PAGES PREVIOUSLY MARKED AS STATE'S EXHIBIT S-73 FOR
IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS:

Q. Dr. Hayne, before we go into this, let me show you
a few other things. Next, I would like to ask you about the
autopsy report and the examination you did on Robert Golden.
What did you observe when you noticed the body of Robert
Golden?

A. Mr. Golden was an African-American male. He
measured 5-foot, 6 inches in height and had a body weight of
140 pounds. He was of slight frame, and he was also further
noted to be fully clothed. The traumatic injuries
essentially consisted of two injuries, an entrance gunshot
wound to the left side of the head, an exit gunshot wound to
the right side of the head. The entrance gunshot wound to
the left side of the head revealed a characteristic not seen
in the other gunshot wounds in that there was tattooing or
unburnt fragments of powder embedded around the entrance
gunshot wound into the skin surface indicative that the
weapon was fired in very close proximity to Mr. Golden's
head; that is, unburnt fragments of powder leave the muzzle
of the weapon, become imbedded underneath the skin surface,
and it leaves a picture very similar to small fragments of
pepper on the skin surface. There was an exit gunshot wound
located over the right side of the head. That wound was

Dr. Steven Hayne - DIRECT

1 located slightly higher and slightly towards the back from
2 the entrance gunshot wound. The entrance gunshot wound
3 actually struck the left ear at a point 5 inches below the
4 top of the head, 4 inches forward from the back of the head.

5 Q. All right, so how many times was Robert Golden
6 shot?

7 A. He was shot one time. The bullet entered the left
8 side of the head, exited the right side of the head.

9 Q. Was there another entrance that didn't have an
10 exit?

11 A. No, sir.

12 Q. Did you take photographs also of Mr. Golden?

13 A. Yes, sir. Photographic documentation was made of
14 Mr. Golden during the course of the autopsy.

15 Q. I would like to hand you Exhibit 65, 66, 67, 68,
16 71, 70, and 69; ask if you would, examine these.

17 A. (Pause) Yes, Counsel.

18 Q. Do those photographs truly and accurately depict
19 what you saw on the body of Robert Golden at the time you did
20 your examination?

21 A. They did, sir.

22 Q. And do those, will those photographs assist you in
23 being able to point out to the jury what your findings were?

24 A. Yes, sir.

25 **BY MR. EVANS:** Your Honor, I offer these
26 photographs into evidence.

27 **BY MR. CARTER:** No objection.

28 **BY THE COURT:** Let them be marked as exhibits.

29 (PHOTOGRAPHS PREVIOUSLY MARKED FOR IDENTIFICATION)

Dr. Steven Hayne - DIRECT

AS STATE'S EXHIBITS S-65, S-66, S-67, S-68, S-69, S-70, AND
S-71 FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS:

Q. Dr. Hayne, I will now hand you Exhibit 75 and ask
that you identify it, please.

A. Yes, sir.

Q. Can you tell us what that exhibit is?

A. This is the first gunshot wound. I said that there
was one. There are actually two. The first gunshot wound
that I described - not necessarily in the order first gunshot
wound of infliction - only the first gunshot wound that I
described, shows an entrance gunshot wound located over the
left side of the head, entering the left ear, and there is
areas of black marking that I placed on it corresponding to
the tattooing which would be indicative of a weapon fired in
close proximity. Also, on the diagram sheet there is an exit
gunshot wound located slightly above and behind the right
ear. There are other diagram sheets showing the path of the
bullet and also showing the injuries to the brain as well as
to the skull itself, fractures of the skull cap, the
calvarium as well as fractures of the base of the skull.

Q. All right, and are those your diagrams that you
made in examining Mr. Golden?

A. They are, Counsel.

BY MR. EVANS: I offer this exhibit into
evidence, Your Honor.

BY MR. CARTER: No objection.

BY THE COURT: Let it be admitted.

(AUTOPSY DIAGRAM OF ROBERT GOLDEN CONSISTING OF

Dr. Steven Hayne - DIRECT

1 FOUR PAGES PREVIOUSLY MARKED AS STATE'S EXHIBIT S-75 FOR
2 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

3 BY MR. EVANS:

4 Q. All right, Dr. Hayne, before we go into any of your
5 other examinations, I don't want to get too far ahead. I
6 would like to go back to Ms. Tardy for a minute.

7 A. Yes, Counsel.

8 Q. What I would like for you to do -- Your Honor, may
9 the witness step down?

10 BY THE COURT: Yes.

11 BY MR. EVANS:

12 Q. I would like for you to step down here.

13 A. (Witness steps down in front of jury box.)

14 Q. On your diagram of Ms. Tardy, you are pointing out,
15 point out where her injuries were. Would you point out to
16 the ladies and gentlemen on me where the entrance gunshot
17 wound was?

18 A. Yes, Counsel. The entrance gunshot wound was
19 located on the right side of the head, specifically slightly
20 above the right ear. The bullet entered above and slightly
21 behind the right ear at a point three inches below the top of
22 the head and at a point three and one half inches forward
23 from the back of the head.

24 Q. And do those diagrams show that?

25 A. They do, sir.

26 Q. Where was the exit gunshot?

27 A. The exit gunshot wound was located adjacent to the
28 left eye at a point four inches below the top of the head two
29 and one half inches to the left of the nose.

Dr. Steven Hayne - DIRECT

1 Q. All right. Thank you. While you are down here,
2 let's go ahead and do the same thing on Mr. Golden. Gunshot
3 wound number one, as far as -- now you can't say which one
4 was fired first, can you?

5 A. No. All I can say is that they were fired in close
6 temple proximity, about the same time. There is no aging
7 between the two gunshot wounds.

8 Q. All right, the one that you have designated as
9 gunshot wound number one, would you point out on my head
10 where that entrance wound is.

11 A. The entrance gunshot wound is located to involve
12 the upper part of the left ear entering approximately here at
13 a point five inches below the top of the head and
14 approximately four inches forward from the back of the head,
15 entering approximately there with tattooing centered around
16 the entrance gunshot wound measuring four by five inches in
17 extent.

18 Q. So that entrance wound actually had tattooing that
19 went into the skin?

20 A. Yes, sir.

21 Q. Do you have an opinion based upon your experience
22 and expertise of how close the muzzle would have been to his
23 head when that bullet was fired?

24 A. It would be several inches away, approximately
25 6 inches, maybe 9 inches away. To get the exact distance,
26 one would have to test fire the weapon of the same
27 ammunition, but it would indicate that the muzzle of the
28 weapon was very close to Mr. Golden's head when the weapon
29 was fired.

Dr. Steven Hayne - DIRECT

1 Q. All right, that particular wound that you have just
2 described, did it have an exit?

3 A. It did, sir.

4 Q. Where was the exit?

5 A. The exit gunshot wound was located on the right
6 side of the head slightly above and slightly behind the right
7 ear, the bullet traveling slightly upward and slightly
8 towards the back, each at approximately 10 degrees.

9 Q. All right. And the second gunshot wound as you
10 designated it?

11 A. The second gunshot wound is located near the apex
12 of the head traveling markedly downward, and that bullet was
13 recovered at the base of the skull.

14 Q. All right. If you would, take your seat again for
15 a minute.

16 A. (Witness resumes witness stand.)

17 BY MR. EVANS: Your Honor, the other photographs
18 that we introduced, that you accepted, I'm passing
19 through the bailiff.

20 BY MR. EVANS:

21 Q. All right, before we go any further, you have
22 described in the second gunshot wound of Mr. Golden that that
23 wound did not exit the body; is that correct?

24 A. It did not, Counselor. That bullet traveled
25 markedly downward going towards the left ear, sir.

26 Q. Did you in your examination, were you able to
27 recover any projectiles from Mr. Golden's head?

28 A. Yes, sir. A projectile was recovered from the
29 head, sir.

Dr. Steven Hayne - DIRECT

1 Q. And what was done with the projectile when you
2 recovered it?

3 A. It was transferred to the custody of the
4 Mississippi State Crime Lab for analysis, sir.

5 Q. Dr. Hayne, I want to hand you Exhibit 87 for
6 identification and ask that you examine this and see if you
7 can identify it?

8 A. (Pause) Yes, sir. The writing is faint. It
9 indicates that it's from Mr. Golden. It gives the case
10 number. It says "bullet from gunshot wound number 2," and I
11 can see part of my signature. And inside there is a plastic
12 tube, and it contains the same information on the outside,
13 which is now difficult to read, as well as a fragment of a
14 projectile recovered from the decedent's head.

15 Q. And that is the projectile fragment that you
16 recovered from Robert Golden's head?

17 A. It is, Counselor.

18 BY MR. EVANS: Your Honor, I offer this exhibit
19 into evidence.

20 BY MR. CARTER: One moment, Your Honor. Let me
21 see it.

22 (Defense Counsel look at the exhibit.)

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
24 JURY AS FOLLOWS:)

25 BY MR. CARTER: Well, Your Honor, I realize that
26 it probably is, but from what--

27 BY THE COURT: -- I can't hear you.

28 BY MR. CARTER: I said I realize that this is
29 probably is, in fact, the exhibit. But as far as

Dr. Steven Hayne - DIRECT

1 being able to read on here and identify the
2 information that it says in particular that this is
3 what it says it is, I just can't make it out
4 definitely, and I object.

5 **BY THE COURT:** Well, he is subject to cross-
6 examination. That is overruled.

7 END BENCH CONFERENCE.

8 **BY MR. EVANS:** I again offer this into evidence.

9 **BY THE COURT:** It is admitted.

10 (FRAGMENTED BULLET IN PLASTIC TUBE TAKEN FROM
11 ROBERT GOLDEN PREVIOUSLY MARKED AS STATE'S EXHIBIT S-87 FOR
12 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

13 BY MR. EVANS:

14 Q. All right, Dr. Hayne, so that I don't get too much
15 ahead of myself, I want to go back to Ms. Tardy for a minute.

16 A. Yes, Counsel.

17 Q. On her you have described the entrance wound, the
18 exit wound and the path. Can you tell us what that bullet
19 went through?

20 A. In Ms. Tardy's case?

21 Q. Yes, sir.

22 A. The bullet went through the skull, produced a wound
23 track through the brain itself measuring approximately the
24 diameter of a quarter, producing massive injuries to the
25 brain, bleeding around the surface of the brain in the
26 subdural space; also, bleeding into the ventricular space of
27 the brain itself producing bruising to the brain and also
28 fracturing the base of the skull, that part of the skull in
29 which the brain actually sits. There was massive, what is

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1171-1320

VOLUME 16 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Dr. Steven Hayne - DIRECT

1 call medically cranial cerebral trauma, fractures to the
2 skull, injuries to the brain, sir.

3 Q. All right, Dr. Hayne, can you tell us as an expert
4 in the field of forensic pathologist if you have an opinion
5 as to the cause and manner of her death?

6 A. I do, Counsel.

7 Q. What is that opinion?

8 A. Ms. Tardy died from a gunshot wound to the right
9 temple, the right side of the head. I described it as
10 distant and perforating. The bullet entered the body, and it
11 exited the body.

12 Q. Now you have described this wound as distant. Can
13 you tell us what that means in forensic pathology terms?

14 A. I saw no evidence of powder residue whether it be
15 tattooing, smudging or flame injury. And that would indicate
16 to me that the weapon was no closer than approximately a foot
17 and a half to two and a half feet away when the weapon was
18 discharged. It could have been at a greater length, but I
19 found no evidence it was any closer than that.

20 Q. So basically, you can determine if it was closer
21 than that distance, but as long as it's not closer, you can't
22 determine how far away it was?

23 A. If it's, if it's two and a half feet or greater, I
24 cannot determine the actual distance, only that it is greater
25 than approximately a foot and a half to two and a half feet.

26 Q. But in this particular case, it would be different
27 than Mr. Golden. The muzzle would have had to have been at
28 least two, two and a half feet away from Ms. Tardy's head; is
29 that correct?

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APR 14 2004

Dr. Steven Hayne - DIRECT

1 A. That would be correct, Counsel.

2 Q. Dr. Hayne, based upon your examination and the
3 wounds, do you have an opinion as to any approximate time
4 that it would have been between the impact and Ms. Tardy's
5 death?

6 A. Ms. Tardy would have been immediately
7 incapacitated, would be unable to carry on any purposeful
8 movement. And any cognitive of reasoning would have ended
9 with the gunshot wound, upon the infliction of the gunshot
10 wound. Death would have occurred in a relatively short
11 period of time after the receiving of the gunshot wound. In
12 fact, it could have been almost instantaneous when Ms. Tardy
13 was shot, from the time she was shot until the time she died.

14 Q. All right. Now let's go back to Mr. Golden for a
15 minute. Starting with the first gunshot wound that you have
16 designated, can you tell us what that bullet did and what
17 damage it caused?

18 A. The gunshot wound to the left ear went through the
19 skull on the left side, went through the brain again
20 producing a gaping gunshot wound through the brain. The
21 bullet then exited the right side of the head producing
22 fractures again to the skull cap itself as well as fractures
23 to the base of the skull. It would have produced massive
24 injuries to the brain, bleeding around the brain, and
25 bleeding within the brain itself. Again, it would produce
26 lethal cranial cerebral trauma, fractures to the skull as
27 well as injuries to the brain.

28 Q. And gunshot wound number two as you designated it?

29 A. Gunshot wound number two which struck the top part

Dr. Steven Hayne - DIRECT

1 of the head towards the back, Mr. Golden would again have
2 produced massive cranial cerebral trauma. The bullet was
3 traveling downward markedly, slightly to the left, coming to
4 rest on the floor of the skull of the decedent, on the base
5 of the part of the skull itself. And that would have
6 produced, like the first one, essentially instant
7 incapacitation. The person receiving either of those gunshot
8 wounds would have been rendered incapable of carrying on any
9 purposeful action.

10 Q. All right, and Dr. Hayne, for the record, do you
11 have an expert opinion as to the cause and manner of death of
12 Robert Golden?

13 A. I do, Counselor.

14 Q. What is that opinion?

15 A. Mr. Golden died of two gunshot wounds: A near
16 contact perforating gunshot wound to the left ear, a distant
17 penetrating gunshot wound to the top of the head.

18 Q. And the projectile that is in evidence at this
19 time, you had that delivered or delivered it to the State
20 Crime Lab for examination; is that correct?

21 A. It was, sir. It was transported under chain of
22 custody to the Mississippi State Crime Lab for the purposes
23 of having the firearms division analyze the projectile.

24 Q. Dr. Hayne, the next autopsy that I would like to go
25 through with you is that of Ms. Rigby, Ms. Carmen Rigby?

26 A. Yes, Counsel.

27 Q. When did you perform that autopsy?

28 A. It was conducted on the 16th of July, 1996, at
29 11:30.

Dr. Steven Hayne - DIRECT

1 Q. Again, as we have done with the other victims,
2 would you describe to the jury what you observed when you
3 first examined Ms. Rigby?

4 A. Ms. Rigby was a Caucasian female, had a recorded
5 age of 45 years; measured 5 foot, 5 inches in height and had
6 a body weight of 145 pounds. She was fully clothed. In this
7 case there were two types of injuries. There was blunt force
8 trauma as well as evidence of a single gunshot wound. The
9 gunshot wound was unusual in that it had struck the decedent
10 in the back of the head, traveled markedly to the right,
11 entering on the right back of the head of .1 inch to the
12 right of the midline of the back of the head, 3 inches below
13 the top of the head. A large fragment of bone was ejected
14 through the scalp exiting adjacent to the right ear, in fact,
15 slightly behind the right ear. The preponderance of the
16 projectile entered the cranial vault entering the space that
17 holds the brain itself producing extensive injuries from the
18 projectile as well as secondary bone missile fragments.
19 Fragments of bone as well as the projectile were driven into
20 the brain itself producing again, cranial cerebral trauma.

21 There was a second type of injury identified on the
22 decedent consisting of abrasions and contusions, abrasions
23 being small scrapes of the skin or scratches located at two
24 specific sites, located over the left side of the head of
25 small size, the forehead and the left cheek. There was also
26 a series of abrasions located over the front surface of the
27 right shoulder as well as the right arm, and there were
28 contusions or bruises located over the front surface of the
29 right arm near the right shoulder.

Dr. Steven Hayne - DIRECT

1 So there were not only an unusual gunshot wound,
2 but the gunshot wound was a penetrating wound though there
3 was an exit wound consisting of a fragment of bone exiting
4 the left back of the scalp. But there was also blunt force
5 trauma located over the face and the upper part of the right
6 upper extremity.

7 Q. All right, now if I understand what you are saying,
8 the exit wound was not caused by the projectile going out of
9 the skull; it was caused by the projectile forcing a piece of
10 bone out of the skull? Is that correct?

11 A. Yes, sir. The bullet struck at a markedly
12 tangential angle, traveling markedly to the right. It was on
13 the back right side of the head, and in a wound like that,
14 one can get what is called a keyhole injury where a fragment
15 of bone is ejected to the side. And in this case it had
16 enough force to actually go through the skin's surface.

17 Q. All right. Let me stop right there for just a
18 second.

19 (Mr. Evans gets photographs and diagram back from
20 Mr. Carter who had been examining them.)

21 Q. I want to hand you Exhibit 74 for identification
22 and ask you if that is, in fact, part of your report that
23 shows the diagrams?

24 A. Yes, sir. These show the diagrams from the gunshot
25 wound involving Carmen Rigby's death, sir.

26 **BY MR. EVANS:** Your Honor, I offer that exhibit
27 into evidence.

28 **BY MR. CARTER:** No objection to that.

29 **BY THE COURT:** I'm sorry; what did you say?

Dr. Steven Hayne - DIRECT

1 **BY MR. CARTER:** No objection to that particular
2 one.

3 **BY THE COURT:** Okay. It will be admitted.

4 (AUTOPSY DIAGRAM OF CARMEN RIGBY AND CONSISTING OF
5 FOUR PAGES PREVIOUSLY MARKED AS STATE'S EXHIBIT S-74 FOR
6 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

7 BY MR. EVANS:

8 Q. Dr. Hayne, I want to show you Exhibits 60, 64, 63,
9 62, and 61. I will ask if you can identify what these are?

10 A. (Pause) Yes, Counsel.

11 Q. Can you tell us without going into detail about
12 them, can you tell us what those are pictures of?

13 A. Yes, Counselor. Those are photographs of the
14 decedent Carmen Rigby taken at the time of the postmortem
15 examination, in part to demonstrate and document injuries
16 that were observed on the body at the time of the autopsy.

17 Q. Okay, and do those photographs show the injuries
18 that you have described?

19 A. They do in part, sir.

20 **BY MR. EVANS:** Okay. Your Honor, I offer these
21 into evidence. I think the Defense--

22 **BY MR. CARTER:** We have an objection to one of
23 them, Your Honor.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
25 JURY AS FOLLOWS:)

26 (Pause while the Court reviewed the photographs.)

27 **BY THE COURT:** Which one are you objecting to?

28 **BY MR. DE GRUY:** Number 60. Any probative value
29 is outweighed by the prejudicial effect. All the

Dr. Steven Hayne - DIRECT

1 blood in that picture is actually covering up what he
2 would be trying to tell about so--

3 BY MR. CARTER: -- And the other pictures show
4 the injuries.

5 BY MR. EVANS: That's the only face shot we have
6 for identification. Plus he has described injuries to
7 her face.

8 BY THE COURT: Well, you can't see them on this
9 picture. I'm going -- is this 60?

10 BY MR. EVANS: Yes, sir. And he may say that it
11 doesn't show anything. What I would like to do is
12 follow up and just ask him if there is anything on
13 that that shows any of the injuries that he has
14 described, just so we will have a record because they
15 do not--

16 BY THE COURT: Okay.

17 BY MR. DE GRUY: We need to do that outside the
18 presence of the jury if he is going to say it doesn't
19 show anything.

20 BY MR. EVANS: I'm not going to show it to them.

21 BY THE COURT: He is just going to ask the
22 question whether or not it shows the injuries, and
23 then I will rule.

24 BY MR. DE GRUY: Oh.

25 BY THE COURT: Okay. Let me rule on these others
26 while I'm at it though. Y'all have got no objection
27 to these?

28 BY MR. DE GRUY: We have no objection.

29 BY THE COURT: Okay. 63, 62, 61, and 64 then are

Dr. Steven Hayne - DIRECT

1 admitted. Let her mark those, and then I will give
2 you this one back, and you can ask that question.

3 END BENCH CONFERENCE.

4 (PHOTOGRAPHS PREVIOUSLY MARKED FOR IDENTIFICATION
5 AS STATE'S EXHIBITS S-61, S-62, S-63 AND S-64 WERE NOW
6 RECEIVED IN EVIDENCE.)

7 BY MR. EVANS:

8 Q. Dr. Hayne, I want to show you again Exhibit 60, and
9 without going into anything about what is on it at this
10 point, does that photograph show any of the injuries that you
11 have described?

12 A. It's difficult to see the abrasions, Counselor.
13 They are small on the left side of the face, but it does show
14 those injuries. It's part of factual change produced by
15 other injuries that partially obscure those, Counsel.

16 Q. All right, would you be just as, could you just as
17 easily point them out on the diagram as you could the
18 picture?

19 A. Yes, Counsel.

20 BY MR. EVANS: Your Honor, I withdraw that
21 exhibit.

22 BY THE COURT: Okay.

23 BY MR. EVANS: May I pass these that--

24 BY THE COURT: They have been admitted, haven't
25 they?

26 BY MR. EVANS: Yes, sir.

27 (Exhibits S-61 through S-64 were passed to the
28 jury.)

29 BY MR. EVANS:

Dr. Steven Hayne - DIRECT

1 Q. Dr. Hayne, could I get you to step back down again,
2 please, sir.

3 BY THE COURT: Yes, sir.

4 (Witness steps down in front of jury box.)

5 BY MR. EVANS:

6 Q. As far as your examination on the body of Ms.
7 Carmen Rigby, would you again point out on me to the ladies
8 and gentlemen of the jury where any wounds are located?

9 A. Yes, Counselor. The entrance gunshot wound was
10 located on the back of the head, three inches below the top
11 of the head, one inch to the right. Entrance gunshot wound
12 would be located approximately here on the decedent. Exit
13 gunshot wound consisting of the bone exiting the wound track
14 was located, was approximately here at a point three and one
15 half inches below the top of the head, one and a quarter
16 inches forward from the back of the head. That wasn't the
17 bullet exit, but it was a fragment of bone that was ejected
18 from the skull secondary to the bullet striking the back of
19 the head driving a piece of bone across the scalp, exiting
20 above and behind the right ear.

21 Q. All right, and will you also point out where the
22 other injuries that you have described were.

23 A. They were small abrasions, scrapes to the skin
24 measuring approximately an eighth to a sixteenth of an inch
25 located over the forehead, the front surface of the right
26 cheek -- or the left cheek. And there were also injuries
27 located over the upper part of the right upper extremity
28 commencing at the lower level of the shoulder traveling
29 downward from a distance of approximately 10 inches, the

Dr. Steven Hayne - DIRECT

1 largest of which consisted of a bruise or a contusion
2 measuring 4 inches in this area; also, a smaller bruise
3 located lower on the extremity and scrapes or scratches
4 called abrasions measuring up to approximately 2 inches
5 located over the shoulder area and also the front surface of
6 the right arm.

7 Q. All right. Thank you, Dr. Hayne. If you would,
8 take your seat again for a minute.

9 A. (Witness resumes witness stand.)

10 Q. Dr. Hayne, you have described that the bullet did
11 not exit on Ms. Rigby; is that correct?

12 A. That's correct, sir.

13 Q. Tell us what you did in an attempt to determine the
14 track of the bullet and if there were any projectiles
15 present?

16 A. The scalp was reflected. The skull was removed.
17 The track was examined, and the initial strike to the back of
18 the skull, and then the wound track was examined and the
19 brain itself. And from that, I ascertained the wound track
20 of the projectile.

21 Q. And what was the path of that bullet?

22 A. The bullet traveled slightly down at approximately
23 10 degrees, markedly to the right at about 60 degrees, and of
24 course, it was traveling from back to front, sir.

25 Q. And were you able to recover any projectiles?

26 A. Yes, sir. Bullet fragments were recovered from
27 within the skull itself and the brain.

28 Q. Dr. Hayne, I want to hand you --

29 (Pause while Mr. Evans shows exhibit to

Dr. Steven Hayne - DIRECT
Mr. Carter.)

Q. I want to hand you Exhibit 86 for identification and ask if you can identify this, please, sir?

A. (Pause) Yes, Counselor.

Q. What is Exhibit 86?

A. It's a composite exhibit, Counselor. It consists of an evidence bag. Though the writing is faint, some of the information is still legible, indicating it is a bullet from the gunshot wound. The name Carmen Rigby is identified on it and also part of my signature and the date. There is a second piece consisting of a hard plastic carrying tube, plastic test tube with a plastic cap, and inside it, it has fragments of a bullet. And it also has the same information on the outside of the test tube.

Q. All right, Dr. Hayne, is that the projectile that you removed from the head of Carmen Rigby?

A. It is, Counsel.

BY MR. EVANS: I offer this exhibit into evidence, Your Honor.

BY MR. CARTER: No objection.

BY THE COURT: Let it be admitted.

(BULLET FRAGMENT IN PLASTIC TUBE TAKEN FROM CARMEN RIGBY PREVIOUSLY MARKED AS STATE'S EXHIBIT S-86 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS:

Q. Dr. Hayne, as for Carmen Rigby, do you have an expert opinion as a forensic pathologist as to the cause and manner of her death?

A. I do, Counsel.

Dr. Steven Hayne - DIRECT

1 Q. What is that opinion?

2 A. Ms. Rigby died from a gunshot wound to the back of
3 the head. I described it as distant and penetrating.

4 Q. The wound or not wound, but the abrasions to the
5 lower part of her arm, were you able to make any
6 determination of what would have caused that?

7 A. Certainly a possibility of a fall would have to be
8 entertained, Counselor. Also, one could not exclude a
9 defensive posturing injury. Any injury located of a
10 traumatic origin in a case such as this, a blow to the level
11 of the elbow to involve the forearm, hand, and fingers can be
12 consistent with a defensive posturing injury.

13 Q. Next Dr. Hayne, I would like to cover the autopsy
14 of Derrick Stewart. When did you perform that autopsy?

15 A. The post mortem examination was conducted on the
16 23rd of July, the year 1996, and it started at 10:15, sir.

17 Q. Can you tell the ladies and gentlemen of the jury
18 what you observed when you first observed Mr. Stewart?

19 A. Mr. Stewart was a Caucasian male. He had a
20 recorded age of 16 years. He appeared the recorded age. He
21 measured 6 foot 2 inches in height and had an approximate
22 body weight of 180 pounds. The only clothing on Mr. Stewart
23 was a hospital gown. Upon removal of the hospital gown,
24 there was evidence of medical intervention, and it was
25 obvious that Mr. Stewart had survived for a period of time,
26 having received a gunshot wound to the head before passing
27 away, sir.

28 Q. You have described that there were some obvious
29 intervention, medical intervention to attempt to save his

Dr. Steven Hayne - DIRECT

1 life. Can you tell us from your examination what that would
2 have consisted of.

3 A. There were puncture sites indicative of intravenous
4 placement of catheters, the delivery of medicines and fluid.
5 And also, the gunshot wounds, the entrance to the back of the
6 head, the exit over the area of the right eyebrow had been
7 dressed and sutured.

8 Q. All right. Before we go any further, I want to
9 hand you Exhibits 53, 54, 55, and 56, and ask you if you can
10 identify these exhibits?

11 A. (Pause) Yes, Counsel.

12 Q. What are those exhibits?

13 A. These are four photographs taken of the decedent,
14 Mr. Stewart.

15 Q. And do those, do those four photographs truly and
16 accurately depict what you observed of Mr. Stewart when you
17 first examined him?

18 A. They do, sir.

19 Q. And would those photographs assist you in being
20 able for the jury to understand what you saw?

21 A. Yes, sir. These are pictorial representations of
22 what I visually observed.

23 BY MR. EVANS: Your Honor, I offer those four
24 exhibits into evidence.

25 BY MR. CARTER: No objection.

26 BY THE COURT: Let them be admitted.

27 (FOUR PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
28 EXHIBITS S-53, S-54, S-55 AND S-56 FOR IDENTIFICATION, WERE
29 NOW RECEIVED IN EVIDENCE.)

Dr. Steven Hayne - DIRECT

1 **BY MR. EVANS:** Again, may I pass these to the
2 jury?

3 **BY THE COURT:** They have been admitted. You may.
4 (Four exhibits of Derrick Stewart passed to the
5 jury.)

6 **BY MR. EVANS:**

7 Q. Dr. Hayne, next I want to hand you Exhibit 72 for
8 identification, ask if you can identify what this is?

9 A. (Pause) Yes, Counselor, these are in part some of
10 the body diagram illustration sheets that shows the old, old
11 scars. It shows medical intervention. It also shows
12 injuries about the eyes as a product of a gunshot wound, and
13 it also shows the wound track. It does not show the specific
14 body diagram sheet for the entrance and exit gunshot wounds.

15 (Mr. Evans gets another document.)

16 Q. Dr. Hayne, if you would, I want you to look through
17 this report and see if that page is in here?

18 A. Yes, Counsel. (Pause) It is, sir.

19 Q. If you would, just remove it from that packet.

20 A. (Witness complies and hands it to Mr. Evans.)

21 Q. Thank you, sir.

22 (Document handed to Mr. Carter.)

23 **BY MR. EVANS:** Your Honor, for the record, I am
24 stapling this other page of his diagram to Exhibit 72
25 for identification.

26 **BY THE COURT:** Okay.

27 **BY MR. EVANS:**

28 Q. All right, I will hand you Exhibit 72 again and ask
29 you now again does that portray the diagrams that you

Dr. Steven Hayne - DIRECT

1 prepared that show the injuries to Derrick Stewart?

2 A. Yes, sir. The external diagrams are portrayed here
3 showing entrance, exit gunshot wound track, other acute
4 injuries as a product of the gunshot wound, medical
5 intervention, and old injuries, scars, sir.

6 BY MR. EVANS: Your Honor, I offer Exhibit, I
7 believe it's 72 into evidence.

8 BY MR. CARTER: No objection.

9 BY THE COURT: Let it be admitted.

10 (AUTOPSY DIAGRAM PERTAINING TO DERRICK STEWART THAT
11 WAS PREVIOUSLY MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
12 S-72 NOW WITH ONE PAGE ADDED WAS ADMITTED IN EVIDENCE.)

13 BY MR. EVANS: May I have Dr. Hayne step down
14 again?

15 BY THE COURT: Uh-hum.

16 (Witness steps down in front of jury box.)

17 BY MR. EVANS:

18 Q. Dr. Hayne, again as to Derrick Stewart, would you
19 point out where the entrance gunshot wound was that you
20 described?

21 A. The entrance gunshot wound was located on the back
22 of the head at a point approximately three inches below the
23 top of the head and approximately one inch to the left. The
24 entrance gunshot wound was located approximately here.

25 Q. And the exit gunshot wound that you have described?

26 A. The exit gunshot wound was located over the right
27 eyebrow, and that was approximately five inches below the top
28 of the head and approximately one and one quarter inches to
29 the right from the bridge of the nose.

Dr. Steven Hayne - DIRECT

1 Q. All right, Dr. Hayne. Any other injuries on the
2 diagram that you need to point out while you are down here?

3 A. The only other injuries were areas of bleeding
4 around both the right and left eyes, back between the eyes,
5 the black eyes, and that was the product of the gunshot wound
6 fracturing the bony plates that ride over the top of the eyes
7 on the base of the skull.

8 Q. All right, Dr. Hayne, if you would, have a seat
9 again, please, sir.

10 A. (Witness resumes witness stand.)

11 Q. Dr. Hayne, did you have an occasion to follow the
12 path of this bullet to determine what damage it did to
13 Derrick Stewart?

14 A. I did, Counsel.

15 Q. Can you describe that path to the jury?

16 A. The bullet, of course, entered the back of the
17 head. It traveled downward at approximately 10 to
18 15 degrees, and it traveled to the right at a similar
19 trajectory approximately 10 to 15 degrees. Of course, it was
20 traveling from back to front. The bullet, once it entered
21 the skull fracturing what is called the occipital bone on the
22 left back of the head, traveled through the brain producing a
23 gaping gunshot wound, again measuring approximately the
24 diameter of a quarter or one inch in diameter. The bullet
25 then exited the base of the skull producing extensive
26 fractures over the bottom part of the skull itself. There
27 was bleeding in the brain as well as around the brain, and
28 there was also change of prolonged respiration change from
29 medical intervention after the decedent had died, softening

Dr. Steven Hayne - DIRECT

1 of the brain, swelling the brain, changes called hypoxic
2 encephalopathy indicated that the brain had essentially
3 ceased functioning and acting as a living organ for a period
4 of time prior to pronouncement.

5 Q. Dr. Hayne, what day did you perform this autopsy?

6 A. It was conducted on the 23rd of July of the year
7 1996.

8 Q. And were your findings consistent with him having
9 received this gunshot wound on July the 16th, 1996?

10 A. They would be, Counselor. They would be consistent
11 with having received it approximately a week earlier.

12 Q. Dr. Hayne, again, as was done with the other
13 victims, do you have an expert opinion as a forensic
14 pathologist as to the cause and manner of death?

15 A. I do, Counselor.

16 Q. And what is that opinion?

17 A. Mr. Stewart died from a gunshot wound to the back
18 of the head. I described it as perforating. The bullet
19 entered and exited the body, and I said it was either near
20 contact or distant; that is, it was not a contact gunshot
21 wound.

22 Q. And can you describe what near contact or distance,
23 how that, how you described that?

24 A. That in a contact gunshot wound there would be
25 powder residue in the track itself. Near contact, one would
26 expect to see different forms of powder residue, flame injury
27 on the skin surface about the entrance gunshot. In a distant
28 gunshot wound, there would be no powder residue found either
29 in the hair or on the scalp.

Dr. Steven Hayne - DIRECT

1 Q. Was any powder residue found here?

2 A. I did not find any, sir. However, medical
3 intervention had occurred prior to my observing the injury.
4 And near contact evidence could have been present but would
5 have been lost during the course of medical intervention.

6 Q. Okay, and if so, it would be because of medical
7 intervention that you can't make that determination in this
8 case; is that correct?

9 A. In that case I could not exclude or include a near
10 contact gunshot wound. All I could exclude was a contact
11 gunshot wound.

12 Q. Yes, sir.

13 BY MR. EVANS: One moment, Your Honor.

14 (State's Counsel confers.)

15 Q. All right, Dr. Hayne, from what you have told us
16 from examining all four bodies of Bertha Tardy, Carmen Rigby,
17 Robert Golden, and Derrick Stewart, out of all four of them,
18 you found three wounds that were entrance and exit wounds.
19 You were not able to recover projectiles from three wounds.
20 Is that correct?

21 A. That's correct.

22 Q. And two wounds that you found did not exit. You
23 were able to recover both of those bullets or pieces of the
24 bullets; is that correct?

25 A. That's correct, sir.

26 Q. And in those two cases, we have introduced the
27 projectiles that you recovered and sent to the crime lab; is
28 that right?

29 A. That's correct, sir.

Dr. Timothy Hayne - CROSS

1 BY MR. EVANS: Your Honor, I tender the witness.

2 BY MR. CARTER: One moment, Your Honor.

3 CROSS-EXAMINATION BY MR. CARTER:

4 Q. How are you doing, Dr. Hayne?

5 A. Good afternoon, Counselor.

6 Q. In the process of determining the cause and manner
7 of death, you don't also determine who actually killed the
8 people; is that correct?

9 A. No, Counselor. I do not participate in that aspect
10 of the investigation. That is outside the purview of the
11 medical examiner's office and would be conducted by law
12 enforcement officials, sir.

13 BY MR. CARTER: Thank you, sir. Tender. No
14 further questions.

15 BY THE COURT: Anything else?

16 BY MR. EVANS: No, sir. We would ask that
17 Dr. Hayne be excused, Your Honor.

18 BY THE COURT: You are free to go, Doctor.

19 BY THE WITNESS: Thank you, sir.

20 WITNESS EXCUSED.

21 BY THE COURT: Who are you going to have next?

22 BY MR. EVANS: Melissa Schoene.

23 BY THE COURT: The next witness will be a little
24 lengthy, ladies and gentlemen, so we will take a break
25 at this time.

26 (FOLLOWING THE AFTERNOON RECESS ON FEBRUARY 6,
27 2004, TESTIMONY CONTINUED IN OPEN COURT WITH ALL COUNSEL AND
28 THE DEFENDANT PRESENT BUT WITH THE JURY STILL OUT:)

29 BY MR. DE GRUY: Your Honor, may we approach?

Bench Conference - JURY OUT

1 **BY THE COURT:** We need Doug. Okay.

2 (CONFERENCE AT THE BENCH WITH THE JURY OUT AS
3 FOLLOWS:)

4 **BY MR. DE GRUY:** Your Honor, during Dr. Hayne's
5 testimony, he was asked if he knew the cause of the
6 blunt force trauma. Of course, we didn't know what
7 his answer was going to be until he answered, and what
8 he said was it could have come from a fall, or it
9 could be what he described as defense posturing. It
10 is purely speculation, and certainly, he couldn't say
11 which one it was. So it is certainly not within a
12 reasonable degree of medical certainty. Our position
13 is that is not evidence in this case. He said it, and
14 I understand that he said it, but it could be either
15 one. But, so my point is that that is not evidence,
16 and I would ask that the District Attorney not be
17 instructed to argue that as if it is in evidence at a
18 later date because it should not -- it was said, but
19 it is not, it doesn't meet the standard for evidence
20 in the case.

21 **BY MR. EVANS:** I disagree. He is a forensic
22 pathologist. He is able to describe his findings and
23 what his opinions of those findings are.

24 **BY THE COURT:** He created an arguable piece of
25 evidence. He said it could be either one which means
26 either one of y'all can argue it either way. But he
27 was qualified as an expert, and in his expert opinion,
28 he said it was one of the two. And that just makes it
29 an arguable fact for y'all to, for either one of you

Bench Conference - JURY OUT

1 to argue either way.

2 BY MR. DE GRUY: So the record is clear, our
3 position is that only within, if the expert can say
4 within a reasonable degree of medical certainty is his
5 opinion an expert opinion, so our position is that it
6 is not. And I think we made our record.

7 BY THE COURT: Well, no objection was made at
8 that time to rendering that opinion based on that
9 objection. So it's in as a reasonable degree of
10 medical certainty that it was one of the two. That is
11 my ruling anyhow.

12 END BENCH CONFERENCE.

13 BY THE COURT: Are we ready?

14 BY MR. DE GRUY: Yes, sir.

15 BY MR. EVANS: Yes, sir.

16 BY THE COURT: All right.

17 JURY ENTERS THE COURTROOM.

18 BY THE COURT: Who will you have next?

19 BY MR. EVANS: Melissa Schoene.

20

21 MELISSA SCHOENE,

22 a white female called to testify as a witness by the State of
23 Mississippi, having first been duly sworn, testified as
24 follows, to-wit:

25 BY THE COURT: State your name, please.

26 BY THE WITNESS: My name is Melissa Schoene. My
27 last name is spelled S C H O E N E.

28 BY MR. EVANS: May I proceed, Your Honor?

29 BY THE COURT: Yes.

Melissa Schoene - DIRECT

DIRECT EXAMINATION BY MR. EVANS:

Q. Ms. Schoene, how are you employed at this time?

A. I am currently employed by the Georgia Perimeter College in Atlanta, Georgia, as an instructor in the chemistry department.

Q. I want to direct your attention back to 1996 and ask how you were employed at that time?

A. In 1996, I was employed by the Mississippi Crime Laboratory as a forensic scientist and crime scene specialist.

Q. Ms. Schoene, how long had you been employed as a forensic scientist and a crime scene specialist?

A. In 1996, I had been with the Mississippi Crime Laboratory for just over three years. And prior to that, I was with the Alabama Department of Forensic Sciences on a part time basis for approximately four years.

Q. So at that time you had a total of seven years in that field; is that correct?

A. Yes, sir.

Q. Can you tell us a little bit about your educational background?

A. Yes, sir. I have earned a Bachelor of Arts degree in criminal justice from the University of Alabama and a Master's of Science degree also from the University of Alabama in the field of organic chemistry.

Q. On July the 16th, 1996, what were your duties?

A. In July of 1996, I was employed with the Crime Laboratory, and my duties were that of a forensic scientist and a crime scene specialist. As a crime scene specialist,

Melissa Schoene - DIRECT

1 it was my responsibility to respond to requests from law
2 enforcement officers throughout the State of Mississippi when
3 they needed assistance with the documentation and collection
4 of evidence from violent crime scenes.

5 Q. Before your employment with the Mississippi Crime
6 Lab, did you have any other related work besides in Alabama?

7 A. While I was in Alabama, only for the Alabama
8 Department of Forensic Sciences and the Northport Police
9 Department on a part time basis while I was still in school.

10 Q. Approximately how many death investigations have
11 you participated in?

12 A. I have been involved in this field since about the
13 year 1990. I would say in that length of time, I have been
14 involved in well over 500 death investigations.

15 Q. And out of the investigations that you have been
16 involved in, have you had occasions to testify in courts in
17 Mississippi as a crime scene specialist and a forensic
18 scientist?

19 A. Yes, sir. I have had the opportunity to testify as
20 both.

21 Q. And have you been qualified by the courts in this
22 state as an expert in those fields?

23 A. Yes, sir. I have.

24 **BY MR. EVANS:** Your Honor, before we go further,
25 I offer Ms. Schoene as an expert in the field of
26 forensic science and crime scene specialist.

27 **BY MR. CARTER:** No objection.

28 **BY THE COURT:** The Court accepts her as an expert
29 in those fields.

Melissa Schoene - DIRECT

BY MR. EVANS:

Q. Ms. Schoene, did you have an occasion on July the 16th, 1996, to be called to assist in any death investigations?

A. Yes, sir. On July the 16th of 1996, I was called to respond to a request for crime scene assistance from the Winona Police Department, Chief Johnny Hargrove, and the Mississippi Highway Patrol Criminal Investigations Bureau. We had, they had called the crime laboratory and spoke with our assistant director, and she had given me scant information, but briefly, her information was that that there had been potentially a multiple homicide in Winona, Mississippi, at a furniture store.

Q. Can you tell us approximately what time you arrived in Winona?

A. Yes, sir. I arrived at Tardy Furniture store at approximately 1:15 that day. It was a Tuesday.

Q. And once you arrived at the scene, what did you do?

A. Upon my arrival at the crime scene, I spoke with the investigators that were already present and tried to figure out what steps, if any, had been taken to document and locate evidence. After doing that, I then walked around Tardy Furniture store. We called that surveying the scene and briefly walked around to observe what was there.

Q. What did you notice on the outside of the store? Did you notice how many doors the building had or anything like that?

A. Well, yes, sir. The store was divided into two different halves, and there seemed to be the main point of

Melissa Schoene - DIRECT

1 entry was the two doors that were northernmost in the store.

2 Q. Okay. Did you at that point take over the crime
3 scene from the investigators that were protecting it?

4 A. Yes, sir. At that time myself and another
5 investigator took over the crime scene and began our
6 procedures of documenting and collecting evidence that we
7 saw.

8 Q. You have described that the investigators there
9 pointed out some evidence to you. Can you tell us a little
10 bit about what was actually pointed out to you when you went
11 in the store?

12 A. Yes, sir. I believe Chief Johnny Hargrove pointed
13 out a few footwear impressions, partial footwear impressions
14 that appeared to be made from a person stepping in blood.
15 There was also various casings and fragments and projectiles
16 lying around on the floor.

17 Q. Okay, before we get into the specific area, it has
18 been described that four people were shot in Tardy Furniture.
19 How many victims were still there when you arrived?

20 A. Upon my arrival to the furniture store, I observed
21 three victims lying on the floor, each in a pool of blood,
22 and then a fourth pool of blood.

23 Q. Okay, there have been some photographs introduced,
24 and I'm going to try to just show them to you from where you
25 are if I can. (Pause while Counsel gets photographs mounted
26 on large board.)
27 The first group of photographs that I want to show you are
28 Exhibits 16A, 17A, 18A and 19A. Can you see those from where
29 you are?

Melissa Schoene - DIRECT

1 A. May I stand up?

2 BY THE COURT: Yes.

3 BY THE WITNESS:

4 A. Yes, sir.

5 Q. And if it would be easier -- may she just step
6 down, Your Honor? It may be easier.

7 BY THE COURT: She can get up. It will be all
8 right.

9 (Witness steps down in front of the jury box.)

10 BY MR. EVANS:

11 Q. Would you point out to the ladies and gentlemen of
12 the jury what you found when you got to the crime scene as is
13 related in these photographs?

14 A. Yes, sir. Let me get my bearings here. This is,
15 this is a victim that was lying on his right side up against
16 the counter that was in the middle of the store. He was
17 lying in a pool of blood. This is the same male victim from
18 a different angle. This is the male victim and an arm of a
19 female victim. This direction is the front of the store, and
20 this again, is the counter that is in the middle of the
21 store. And then this picture is very similar to this picture
22 just from a slightly different angle.

23 Q. All right, just stand right there for a minute if
24 you would. Next I would like to show you 15A, 12A, 13A, and
25 14A. Describe what you observed as relates to these
26 photographs when you arrived at the scene.

27 A. These are photographs of Carmen Rigby on the
28 bottom, the bottom two photographs. This is a photograph of
29 some keys that were very close to her hand. This is a

Melissa Schoene - DIRECT

1 photograph of Carmen Rigby's feet with her, with one sandal
2 off. And in this area is where the bloody footwear
3 impressions were collected, very near Carmen Rigby and the
4 counter.

5 Q. All right. Next Exhibits 20A, 21A, 23A, and 22A.
6 As relates to these photographs, what did you observe when
7 you arrived at the scene?

8 A. These photographs depict Bertha Tardy. This is
9 Bertha Tardy's bottom legs and her skirt. Bertha Tardy is
10 the victim that was in the rear most of the furniture store.
11 This is simply a different angle of Ms. Tardy. This is a
12 close-up of Ms. Tardy's head, and these are Ms. Tardy's
13 glasses that were found fairly near her body.

14 Q. All right. If you would just take a seat for just
15 a minute.

16 A. (Witness resumes witness stand.)

17 Q. Ms. Schoene, once you arrived at the scene and
18 observed where the bodies were located and had certain items
19 such as the footwear impressions pointed out to you, can you
20 tell us what you did next?

21 A. The next thing that I did was began to document and
22 collect the evidence that we observed.

23 Q. And let me just ask you this. As a crime scene
24 specialist, what do you do to collect and preserve evidence?

25 A. Well, first we must locate the evidence, and from
26 there, depending on the type of evidence that it is, we
27 either collect it by placing it in a paper bag or a pill box.
28 Or if it's a more delicate sort of evidence, for example, the
29 bloody footwear impressions, to collect that type of

Melissa Schoene - DIRECT

1 evidence, it was necessary to set up a camera with black and
2 white film and use photography to capture the images of those
3 partial footwear impressions.

4 Q. And did you do that in this case?

5 A. Yes, sir. I did.

6 Q. Before we go any further, did you make any type of
7 chart of what you were doing there at that time? Was there a
8 chart prepared that showed what you found and where you found
9 it?

10 A. Yes, sir. At the crime scene we typically will do
11 a rough sketch, and by that, I mean we do the best we can to
12 sketch out and show measurements of where the victims are in
13 location to the evidence in relation to items, in this case
14 items of furniture inside the store. So yes, I did prepare a
15 sketch at the scene.

16 Q. All right. Now you have said first a rough sketch
17 is done, and going a step further, do you clean the sketch up
18 and make a little bit better sketch after that?

19 A. Yes, sir. Preparing the sketch is usually a two
20 step process. We will produce a rough sketch at the scene,
21 and then we will go back to the crime laboratory, and when we
22 have more time, we will clean up the sketch. And what I mean
23 by that, we don't change anything or alter any of the
24 information. We simply clean it up in a way that is somewhat
25 more presentable, and it's not quite so scratchy and written
26 in different angles and that type thing. We polish it up
27 somewhat.

28 Q. A little straighter lines?

29 A. Yes, sir. A little straighter lines.

Melissa Schoene - DIRECT

1 Q. Do you also prepare a key in the measurement to go
2 along with that diagram?

3 A. Yes. The key is necessary to understand the
4 sketch.

5 (Document shown to Mr. Carter.)

6 BY MR. EVANS:

7 Q. Ms. Schoene, I'm going to hand you Exhibits 40, 39
8 and 51 and ask if you can identify these exhibits?

9 A. Yes, sir. I can identify these exhibits on the
10 basis of my initials. These are the key in measurements for
11 the sketch of the northwest room of Tardy Furniture store,
12 Furniture Company, excuse me, in Winona, Mississippi, is the
13 first two pages. And the third page is the polished sketch,
14 and the fourth page is the rough sketch that I did prepare at
15 the crime scene.

16 Q. Okay. Do those three exhibits truly and accurately
17 depict the key that you did of this case, the rough sketch
18 and the finished sketch that you did of the scene?

19 A. Yes, sir.

20 BY MR. EVANS: Your Honor, I offer these three
21 exhibits into evidence.

22 BY MR. CARTER: No objection.

23 BY THE COURT: Let them be admitted. Do you want
24 to admit them as one?

25 BY MR. EVANS: No, sir. They are three different
26 exhibits so that we keep them straight.

27 (CRIME SCENE POLISHED SKETCH PREVIOUSLY MARKED AS
28 STATE'S EXHIBIT S-39 FOR IDENTIFICATION, KEY AND MEASUREMENT
29 FOR SKETCH PREVIOUSLY MARKED AS STATE'S EXHIBIT S-40 FOR

Melissa Schoene - DIRECT

IDENTIFICATION, and ROUGH HAND DRAWN SKETCH PREVIOUSLY MARKED
AS STATE'S EXHIBIT S-51 FOR IDENTIFICATION WERE NOW ALL
RECEIVED IN EVIDENCE.)

BY MR. EVANS:

Q. Ms. Schoene, I will next hand you Exhibits 40A,
39A, and 40B. I will ask if you can identify what these
exhibits are?

A. Yes, sir. These are enlargements of the key and
the polished sketch that I prepared.

Q. And are they true and correct copies of those?

A. Yes, sir.

BY MR. EVANS: Your Honor, I offer these exhibits
into evidence.

BY MR. CARTER: One moment, Your Honor.
(Counsel examines the exhibits.)

BY MR. CARTER: No objection.

BY THE COURT: Let them be marked and admitted.

(BLOWUP OF POLISHED CRIME SCENE SKETCH PREVIOUSLY
MARKED AS STATE'S EXHIBIT S-39A FOR IDENTIFICATION AND BLOWUP
OF TWO PAGES OF KEY FOR THE SKETCH PREVIOUSLY MARKED AS
STATE'S EXHIBITS S-40A AND S-40B FOR IDENTIFICATION WERE NOW
ALL RECEIVED IN EVIDENCE.)

BY MR. EVANS: Your Honor, what I would like to
do with the Court's permission is pass Exhibits 40,
39, and 51 to the jury as I describe from the larger
exhibits what is on there.

BY THE COURT: Okay.

(Exhibits S-39, 40 and 51 were passed to the jury.)

BY MR. EVANS:

Melissa Schoene - DIRECT

1 Q. Ms. Schoene, would you step down, please.

2 A. (Witness steps down in front of jury box.)

3 Q. Let me get that easel. All right, Exhibit 39A, I'm
4 going to put up here on the easel. If you would, describe to
5 the ladies and gentlemen of the jury what that is and what
6 steps you take or took to prepare that?

7 A. Okay, again this is a polished sketch of the sketch
8 that I prepared while at the crime scene. This is the front
9 of the store. So if you are entering the store here, you
10 would see the yellow crime scene tape. If you continue to
11 the back of the store, you will see a white counter upon
12 which Robert Golden is resting on his right side with his
13 back against the white counter. This is the body of Carmen
14 Rigby. And this -- in a pool of blood, and this is a pool of
15 blood from Mr. Golden. This is the third pool of blood, no
16 victim here upon my arrival. And as you proceed further back
17 to the store, this is Bertha Tardy lying face down in a pool
18 of blood. There is an office that is -- this door here
19 represents an office. And she is closest to this office.

20 Q. Okay, I'm not going to go through everything with
21 that exhibit right now, but there is one other thing I would
22 like for you to point out to the jury. Can you show us the
23 approximate area where these shoe print impressions were in
24 the blood?

25 A. The footwear impressions are labeled and as A, B
26 and C. So the footwear impressions here are behind the crime
27 scene tape fairly close to the body of Bertha Tardy and this
28 pool of blood here.

29 Q. Okay, if you would, take a seat for a minute. It

Melissa Schoene - DIRECT

1 may be easier if we just go with them next.

2 (Witness resumes witness stand. Mr. Evans shows
3 more exhibits for Mr. Carter.)

4 BY MR. EVANS:

5 Q. I will hand you Exhibits 45, 46, 49, 48, 47 and 50
6 and ask you if you can identify what these exhibits are?

7 A. Yes. These are photographs that I took at the
8 crime scene. These are black and white photographs. Two of
9 them are, appear to be either three by five, three by five
10 photographs. And the other four are eight by ten
11 enlargements of some close-ups that I took that day.

12 Q. And do those photographs truly and accurately
13 depict the footwear impressions that you were trying to
14 document at that time and where they were?

15 A. Yes, sir. These truly and accurately represent the
16 footwear impressions that I did document that day.

17 BY MR. EVANS: Your Honor, I offer these exhibits
18 into evidence.

19 BY MR. CARTER: No objection.

20 BY THE COURT: Let them be admitted.

21 (TWO SMALL PHOTOGRAPHS AND FOUR LARGER PHOTOGRAPHS
22 OF FOOTWEAR IMPRESSIONS PREVIOUSLY MARKED AS STATE'S EXHIBITS
23 S-45, S-46, S-47, S-48, S-49 AND S-50 FOR IDENTIFICATION WERE
24 NOW ALL RECEIVED IN EVIDENCE.)

25 BY MR. EVANS:

26 Q. I next would like to show you Exhibits 45A and 46A
27 and ask you if these are true and correct copies of 45 and 46
28 that you just saw, but enlargements?

29 A. Yes, sir. Those are enlargements of the black and

Melissa Schoene - DIRECT

white photographs that I took, yes.

BY MR. EVANS: Your Honor, I offer 45A and 46A into evidence.

BY MR. CARTER: No objection.

BY THE COURT: Let them be admitted.

(ENLARGEMENTS OF TWO PREVIOUS SMALL PHOTOGRAPHS THAT HAD BEEN MARKED AS STATE'S EXHIBITS S-45A AND S-46A FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS: May I pass these, Your Honor?

BY THE COURT: Uh-hum.

(Exhibits S-45, 46, 47, 48, 49, and 50 were passed to the jury.)

BY MR. EVANS:

Q. Ms. Schoene, would you step down again, please.

A. (Witness steps down in front of jury box.)

Q. Ms. Schoene, if you would, just take the pointer, and if you would point out to the ladies and gentlemen of the jury in relationship to the pictures that they have been looking at, what this is and what is significant about these two photographs?

A. These two photographs are reference photographs of the close-up photographs that I made to document the partial footwear impressions. I labeled them. I saw three distinct, what I thought were three distinct areas. I labeled those as A, B, and C; "A" being closest to the front door meaning that "C" is closest to the back of the door in the back office. This is the view that one would have on entering the front door. They would first see A, B, and C. Very close to "C" is the pool of blood where there was no victim, and the body

Melissa Schoene - DIRECT

1 of Carmen Rigby was also in this area. This photograph shows
2 the same three, A, B and C from a different angle. I am
3 taking this photograph at the bottom of a ramp. The counter
4 is over here, and Carmen Rigby and Robert Golden are in this
5 area. And the pool of blood is behind this area as well, and
6 again, "A" is closest to the front door.

7 Q. So those three paper markers, I assume that is
8 paper?

9 A. Yes.

10 Q. With A, B and C on it are the three areas that you
11 took the photographs that the jury has before them now for
12 the purpose of protecting the footwear impression evidence
13 that was on the floor?

14 A. That's exactly right. These photographs were made
15 in an effort to document where these footwear impressions
16 are, and they also correspond to the A, B and C that is on
17 this sketch here, which is labeled as State's Exhibit 39A.
18 A, B and C correspond to A, B and C -- A, B and C.

19 Q. Thank you. If you would, take your seat again for
20 just a minute.

21 A. (Witness resumes witness stand.)

22 Q. All right, Ms. Schoene, what other physical
23 evidence did you preserve there at the scene?

24 A. In addition to the footwear impression evidence, I
25 also collected various forms of firearm evidence. And by
26 that I mean I collected casings, fragments, and projectiles.

27 Q. Did you also document where they were recovered
28 from?

29 A. Yes, I did.

Melissa Schoene - DIRECT

1 Q. And are they shown on the diagram and also on your
2 key and sketch measurements?

3 A. Yes. The locations where I collected those items
4 of evidence are indicated on the polished sketch.

5 Q. Before we get into where they are, let me hand you
6 some exhibits. I guess the simplest is just take them one at
7 a time. I will hand you Exhibit 88 for identification and
8 ask if you can identify it?

9 A. Yes. I can identify State's Exhibit 88, which is
10 crime laboratory's exhibit number 25. It is a sealed white
11 pill box labeled casing, CCI NR .380 auto, collected from
12 near Robert Golden casing number one.

13 Q. Who was that collected by?

14 A. Robert Golden.

15 Q. Now--

16 A. --Oh, it was collected-- excuse me, it was
17 collected by me.

18 Q. Next I show you Exhibit S-89 and ask you if you can
19 identify that?

20 A. State's Exhibit 89 is crime laboratory's exhibit
21 number 26, and it is a casing collected from near Robert
22 Golden. It is casing number two, and I did collect this
23 casing.

24 Q. All right, and Exhibit 90 for identification?

25 A. Exhibit 90 for identification is a casing that was
26 collected from near the body of Carmen Rigby, and it is
27 casing number three, and I did collect this casing.

28 Q. 91 for identification?

29 A. State's Exhibit 91 corresponds to crime

Melissa Schoene - DIRECT

1 laboratory's exhibit number 28. It is a casing collected
2 from the area between Carmen Rigby and Bertha Tardy. It is
3 casing number four, and I did collect this item of evidence.

4 Q. Exhibit 92 for identification?

5 A. Exhibit 92 corresponds to crime laboratory's
6 exhibit number 29, and it is a casing collected from near
7 Bertha Tardy. It is casing number five, and I did collect
8 this casing.

9 Q. All right, would you describe what a casing is?

10 A. Yes, sir. I collected three types of firearms
11 evidence in this case. I collected casings, projectiles, and
12 fragments. A casing is what is left after a bullet or a
13 bullet leaves the live round or a cartridge. A casing is
14 simply what is left behind and what can be ejected from an
15 automatic weapon after a gun is fired.

16 Q. Is it also referred to by some people as just a
17 hull?

18 A. Some folks do call them hulls; yes, sir.

19 Q. So that's what all of these five exhibits are is
20 hulls or casings that you recovered at the scene?

21 A. That's exactly right. Yes, sir.

22 Q. Were you able to determine what caliber these were?

23 A. The head stamp on all of these casings read .380.

24 Q. Okay. And did you document on your chart again
25 where each of these was located?

26 A. Yes, sir. I did.

27 BY MR. EVANS: Your Honor, before we go further,
28 I would move these five exhibits into evidence.

29 BY MR. CARTER: One moment, Your Honor.

Melissa Schoene - DIRECT

1 (Mr. Carter examines the exhibits.)

2 BY MR. CARTER: No objection.

3 BY THE COURT: Let them be marked as exhibits.

4 (FIVE PILL BOXES CONTAINING .380 CASINGS PREVIOUSLY
5 MARKED AS STATE'S EXHIBITS S-88 THROUGH S-92 FOR
6 IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

7 BY MR. EVANS:

8 Q. Ms. Schoene, I want to next hand you Exhibits 83,
9 84, and 85, all for identification and ask you if you can
10 identify them?

11 A. Yes, sir. State's Exhibit 83 corresponds to crime
12 laboratory exhibit number 31, and this is a projectile
13 collected from the area northeast of Robert Golden, and it's
14 labeled as projectile 1B.

15 Q. Okay, and who labeled that as 1B?

16 A. I did.

17 Q. And did you recover it?

18 A. Yes, sir. I collected this item of evidence.

19 Q. Okay, the next exhibit you have there?

20 A. The State's Exhibit 84 corresponds to crime
21 laboratory exhibit number 32, and it is a projectile
22 collected from underneath the love seat next to the south
23 side of the corner. It is labeled as projectile 2B, and I
24 did collect this item of evidence.

25 Q. Okay, and the next exhibit, please?

26 A. State's Exhibit 85 corresponds to crime laboratory
27 exhibit number 33. It is a fragment collected near the body
28 of Carmen Rigby, and it is labeled as fragment 1C, and I did
29 collect this item of evidence.

Melissa Schoene - DIRECT

1 Q. All right, let me go ahead and hand you Exhibit 93
2 for identification, see if you can identify that?

3 A. Exhibit 93 for identification corresponds to crime
4 laboratory exhibit number 30, and this is a cartridge
5 located, collected from near the body of Carmen Rigby. It is
6 labeled as, I believe it's labeled as 1A.

7 Q. All right, and did you recover it also?

8 A. Yes, sir. I did recover this item of evidence.

9 BY MR. EVANS: Your Honor, at this time Exhibits
10 83, 84, 85, and 93, we would moved into evidence.

11 BY MR. CARTER: No objection.

12 BY THE COURT: Let them be marked and admitted.

13 (FIRED BULLET PROJECTILES PREVIOUSLY MARKED AS
14 STATE'S EXHIBITS S-83 AND S-84 FOR IDENTIFICATION WERE NOW
15 RECEIVED IN EVIDENCE. BULLET FRAGMENT NEAR CARMEN RIGBY
16 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-85 FOR IDENTIFICATION
17 AND LIVE .380 CARTRIDGE PREVIOUSLY MARKED AS STATE'S EXHIBIT
18 S-93 FOR IDENTIFICATION WERE ALSO RECEIVED IN EVIDENCE.)

19 BY MR. EVANS: Your Honor, may I have the witness
20 step down again?

21 BY THE COURT: Yes.

22 (Witness steps down in front of jury box.)

23 BY MR. EVANS:

24 Q. State's Exhibit 88 which was one of the hulls or
25 casings that you recovered, can you point out on the diagram
26 39A where it was located?

27 A. State's Exhibit 88 is crime laboratory exhibit
28 number 25, and that is labeled as number 1 on this diagram.

29 Q. All right, so, and that's the only place that you

Melissa Schoene - DIRECT

1 use a number 1 on the diagram; is that correct?

2 A. Yes, sir. I used a 1B and a 1C, but that is the
3 only place that I used only a 1. Letters 1 through 5
4 represent cartridges. 1A -- excuse me, correction. 1
5 through 5 represent casings or hulls. 1A represents the live
6 round or the cartridge. And then 1B and 2B represent
7 projectiles. And 1C and 2C represent fragments.

8 Q. Okay. So this hull was found at Robert Golden's
9 head basically; is that correct?

10 A. Yes, sir.

11 Q. 89?

12 A. State's Exhibit 89 should correspond to crime
13 laboratory exhibit number 26.

14 Q. Right.

15 A. That is casing number 2, which is also near the
16 body of Robert Golden.

17 Q. Okay, so 89 and 88 were both closest to Robert
18 Golden?

19 A. Yes.

20 Q. State's Exhibit 90?

21 A. Which is crime laboratory exhibit number 27 is
22 casing number 3, and that was found near the body of Carmen
23 Rigby.

24 Q. Okay. 91?

25 A. State's Exhibit 91 corresponds to crime laboratory
26 exhibit number 28, and that was located in this area near the
27 pool of blood.

28 Q. And that would be the pool of blood that Derrick
29 Stewart's body had already been removed from when you got

Melissa Schoene - DIRECT

there?

A. I can't say where that pool of blood came from. That's the information I was given.

Q. Okay, it wasn't related to any of the three bodies that were there?

A. No, sir. This pool of blood did not come from any of the three victims here.

Q. Okay. State's Exhibit 92?

A. State's Exhibit 92 is crime laboratory case number, exhibit number 29, and that is the casing that was found here close to the body of Bertha Tardy.

Q. All right, so there were five casings found at the scene that you recovered; is that correct?

A. Yes, sir. Five casings, 1 through 5.

Q. And you have them listed --

A. On the key and measurements for the sketch, yes, sir.

Q. And had the measurements where they were found?

A. Yes, sir.

Q. Okay. Next, Exhibit 83?

A. Okay, Exhibit 83 is crime laboratory exhibit number 31. That should be projectile 1B, and that is a projectile that is located fairly close to the body of Robert Golden.

Q. All right, and I don't think we did this while ago. For the record, would you describe what a projectile is?

A. A projectile is something that, a bullet. It was something that comes from the barrel of a gun. I have described projectiles and fragments. And a projectile is what exits the barrel of the gun when a casing is left behind

Melissa Schoene - DIRECT

1 or perhaps ejected. The projectile comes through the barrel.
2 And I am also describing fragments, and a fragment is just a
3 portion of a projectile.

4 Q. All right, so this projectile was found where you
5 have 1B marked?

6 A. Yes, sir.

7 Q. Exhibit 84?

8 A. Exhibit 84 is crime laboratory exhibit number 32,
9 which is 2B. It was located here near the pool, this pool of
10 blood, somewhere in between the pool of blood and the feet of
11 Bertha Tardy.

12 Q. 85. Which is crime laboratory number 33.

13 A. Okay. That is, that corresponds to 1C, and this is
14 a fragment that was found near, that was collected from near
15 the body of Carmen Rigby, in this area.

16 Q. All right, and the round that was 93?

17 A. This, what, this live round is State's Exhibit 93
18 which is crime lab exhibit number 30. This was a live round
19 or a bullet. This was a casing and a projectile. It is a
20 bullet that basically hasn't been fired.

21 Q. Okay, and it is marked 1A?

22 A. It is marked 1A, and it was found in close
23 proximity to the sandal that was once on the foot of Carmen
24 Rigby.

25 Q. Okay. While you are down here, can you point out
26 anything else that you observed while you were in the store
27 as far as--

28 BY MR. CARTER: -- Objection. Leading.

29 BY MR. EVANS:

Melissa Schoene - DIRECT

1 Q. As far as any cash drawers or anything like that?

2 A. Certainly. When I, upon entering the store, as I
3 said, I saw the three victims on the floor and the fourth
4 pool of blood. I saw the footwear impressions and various
5 firearms evidence. This is the counter that is in the center
6 of the store. There is a cash drawer here that is on this,
7 on this counter that did not contain any paper bills. There
8 was also a purse here that contained the identification of
9 Carmen Rigby. And in the back of the store here I mentioned
10 that there is an office. This is the doorway to an office.
11 There is a fairly small office in the back where there was a
12 safe. The safe door was closed but not locked. Inside of
13 that safe, I did look at the contents of the safe, and I did
14 not find any cash inside of this safe.

15 Q. Okay. Did you find any projectiles around the body
16 of Ms. Bertha Tardy?

17 A. I recovered a casing from this area.

18 Q. Okay. You didn't recover any projectiles?

19 A. Right.

20 Q. Was anything pointed out to you in that area
21 related to a possible projectile?

22 A. There was damage to a post here. Yes.

23 Q. If you would, have a seat again, please.

24 (Witness resumes witness stand, and Mr. Evans shows
25 more photographs to defense counsel.)

26 BY MR. EVANS:

27 Q. I'm going to hand you Exhibits 28, 29, 98, 38, and
28 41 for identification and ask if you can identify what these
29 are?

Melissa Schoene - DIRECT

1 A. Would you like me to go in the order in which you
2 handed them to me, which I'm afraid I just got out of order?

3 Q. Yeah. The order doesn't matter.

4 A. Okay. State's Exhibit 38 is a photograph of the
5 safe which was located in the office.

6 Q. And does that photograph show that safe as you
7 found it?

8 A. Yes. This photograph shows the safe in the closed
9 position.

10 Q. Unlocked and closed?

11 A. Yes, sir. You can't tell that it's unlocked from
12 the photo, but it was closed in the unlocked -- it was closed
13 but unlocked.

14 Q. All right, the next photograph?

15 A. The next photograph is State's Exhibit 98, and it
16 is a photograph of a projectile 2B. It is labeled on the
17 sketch.

18 Q. All right.

19 A. State's Exhibit 29 is a photograph of the cash
20 drawer that was in the central area of the store shown in the
21 open position showing that there is no money bills within the
22 cash register.

23 Q. Okay.

24 A. I would like to point out that this is--

25 Q. -- Don't hold them up yet. They are not in
26 evidence yet.

27 A. Okay, all right. This is State's Exhibit 28 is a
28 photograph of the central area of the store behind the
29 counter where the purse was located. And State's Exhibit 41

Melissa Schoene - DIRECT

1 is a photograph of projectile 1B as labeled on the sketch.

2 Q. All right, and do these pictures truly and
3 accurately show what you have just described as you saw them
4 while you were there at the store?

5 A. Yes.

6 Q. And I think you were starting to say, and I stopped
7 you at that point. The cash drawer, was it actually open or
8 closed when you first saw it?

9 A. It was closed when I first saw it.

10 Q. Who opened it to take that picture?

11 A. Either I or one of the criminal investigation's
12 Bureau investigators.

13 BY MR. EVANS: All right, Your Honor, at this
14 point I offer these exhibits into evidence.

15 BY MR. CARTER: No objection.

16 BY THE COURT: Okay. Admit them into evidence.

17 (FOUR PHOTOGRAPHS PREVIOUSLY MARKED FOR
18 IDENTIFICATION AS STATE'S EXHIBITS S-28, S-29, S-38, AND S-98
19 WERE NOW ALL RECEIVED IN EVIDENCE.)

20 BY MR. EVANS: Your Honor, may the witness step
21 down again, please?

22 BY THE COURT: Yes.

23 (Witness steps down in front of blow-up on easel.)

24 BY MR. EVANS:

25 Q. Ms. Schoene, I want to specifically direct your
26 attention to Exhibit 23A and ask you if you can point out the
27 area that was pointed out to you where a projectile may have
28 struck?

29 A. From this picture, I believe it was this area.

Melissa Schoene - DIRECT

1 Q. Okay. All right. Thank you.

2 A. Uh-huh.

3 Q. Wait just a minute; while you are down here. Let's
4 go back -- (Pause) I think I have covered that.

5 A. (Witness resumes the witness stand.)

6 Q. Other than the scene, were you asked to examine any
7 vehicles that day?

8 A. Yes, sir. I was requested to examine the glove box
9 and passenger window area of an older model brown vehicle
10 when I finished processing this scene.

11 Q. All right. I want to hand you --

12 (Pause while photographs were shown to Mr. Carter.)

13 BY MR. EVANS:

14 Q. I'm going to hand you Exhibits 101, 99 and 100 and
15 ask that you examine these. Can you identify what they are?

16 A. Yes, sir. Those are photographs of the exterior of
17 the brown vehicle that I was asked to dust for fingerprints.

18 Q. And Exhibit 101?

19 A. State's Exhibit 101 is a photograph of the glove
20 box.

21 Q. All right. And is this, does this appear to be the
22 vehicle that you dusted at that time?

23 A. Yes, it does.

24 BY MR. EVANS: I offer these exhibits into
25 evidence, Your Honor.

26 BY MR. CARTER: No objection.

27 BY THE COURT: Let them be admitted.

28 (THREE PHOTOGRAPHS OF DOYLE SIMPSON'S CAR
29 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-99, S-100 AND S-101

Melissa Schoene - DIRECT

FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS:

Q. Ms. Schoene, I want to hand you now Exhibit 100A, 99A, and 101A, and I will ask you if they appear to be identical to the ones you have just described except enlargements?

A. Yes, sir.

BY MR. EVANS: Your Honor, I offer this exhibit into evidence or these three exhibits into evidence.

BY MR. CARTER: No objection.

BY THE COURT: Let them be marked.

(ENLARGEMENTS OF PREVIOUS THREE PHOTOGRAPHS THAT WERE PREVIOUSLY MARKED AS STATE'S EXHIBITS S-99A, S-100A, AND S-101A FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

BY MR. EVANS:

Q. Ms. Schoene, on this diagram-- well, first did you notice, can you notice in that photograph any damage to the glove compartment of the vehicle?

A. Yes, sir. There appears to be some damage to this area on the top portion of the glove box near the latch.

Q. Okay. You stated that you attempted to get prints out of the car?

A. Yes, sir. I was requested to examine the area around the glove box and the glove box itself for fingerprints. I did dust those areas as best I could. However, the receiving surface, the receiving surfaces for -- those surfaces were not very well suited to retrieve fingerprints. It was a fairly old vehicle, and the interior was dusty, and the glass which is typically a very good

Melissa Schoene - DIRECT

1 medium for recovering latent prints, was wet from the rain of
2 that day.

3 Q. Okay. I will next hand you 29A and ask you if you
4 can identify this?

5 A. Yes, sir. This is an enlargement of the cash box
6 that was in the central portion of Tardy Furniture store.

7 BY MR. EVANS: I offer this exhibit into
8 evidence, Your Honor.

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let it be admitted.

11 (ENLARGEMENT OF CASH DRAWER PREVIOUSLY MARKED AS
12 STATE'S EXHIBIT S-29A FOR IDENTIFICATION WAS NOW RECEIVED IN
13 EVIDENCE.)

14 BY MR. EVANS:

15 Q. Is this the same cash drawer that you have
16 previously described to the jury already?

17 A. Yes, sir. That was, this cash drawer was located
18 in the central island of Tardy Furniture store. At this
19 particular store there was not what you would call a cash
20 register. It was, the money seemed to be kept in this cash
21 drawer. Yes, sir, and that was in the central portion of
22 Tardy Furniture store.

23 Q. Did you find any bills in that cash drawer?

24 A. No, sir. Upon my arrival, there were no bills in
25 that cash drawer.

26 Q. Exhibit 41A. Can you identify this?

27 A. Yes, sir. This is an enlargement of a photograph
28 that you had shown me earlier. This is an enlargement of a
29 photograph of projectile 1B.

Melissa Schoene - DIRECT

1 **BY MR. EVANS:** Your Honor, I offer this into
2 evidence.

3 **BY MR. CARTER:** No objection.

4 **BY THE COURT:** Let it be admitted.

5 (BLOWUP OF PROJECTILE ON FLOOR PREVIOUSLY MARKED AS
6 STATE'S EXHIBIT S-41A FOR IDENTIFICATION WAS NOW RECEIVED IN
7 EVIDENCE.)

8 BY MR. EVANS:

9 Q. Exhibit 28A.

10 A. Yes, sir. This is an enlargement of a photograph
11 that you showed me earlier. This depicts the area that the
12 central portion of Tardy Furniture store where the cash
13 drawer was located. This is a purse in the center that
14 contains identification belonging to Bertha Tardy, and in the
15 background you see the front of the store.

16 **BY MR. EVANS:** I offer this exhibit into
17 evidence, Your Honor.

18 **BY MR. CARTER:** No objection.

19 **BY THE COURT:** Let it be admitted.

20 (BLOWUP OF PHOTOGRAPH DESCRIBED ABOVE PREVIOUSLY
21 MARKED AS STATE'S EXHIBIT S-28A FOR IDENTIFICATION WAS NOW
22 RECEIVED IN EVIDENCE.)

23 BY MR. EVANS:

24 Q. And Exhibit 28, does it show the purse of Ms. Rigby
25 as it was in the place it was when you arrived in the store?

26 A. Yes, sir.

27 Q. And your chart also, does it show it in this
28 location?

29 A. Yes, sir.

Melissa Schoene - DIRECT

1 Q. Exhibit 38A, can you identify this?

2 A. Yes, sir. This is an enlargement of a photograph
3 that you showed me earlier which is a photograph depicting
4 the safe in the rear office of Tardy Furniture store. It
5 indicates the position and the appearance of the safe upon my
6 arrival which was closed but not locked.

7 BY MR. EVANS: I offer it into evidence, Your
8 Honor.

9 BY MR. CARTER: No objection.

10 BY THE COURT: Let it be admitted.

11 (BLOWUP OF PHOTOGRAPH OF SAFE PREVIOUSLY MARKED AS
12 STATE'S EXHIBIT S-38A FOR IDENTIFICATION WAS NOW RECEIVED IN
13 EVIDENCE.)

14 BY MR. EVANS:

15 Q. In what location in the store was this safe
16 located?

17 A. It is in the very back of the store in an office
18 directly behind the body of Bertha Tardy.

19 (More photographs were shown to Mr. Carter.)

20 BY THE COURT: Can I see y'all just a minute?

21 BY MR. EVANS: Yes, sir.

22 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
23 JURY AS FOLLOWS:)

24 BY THE COURT: I don't know what other
25 photographs we have got left, depending on how many
26 more enlargements you have got, but I don't know of
27 any legal impediment to you just introducing the
28 enlargements rather than both photographs. It would
29 save us some time, except in the case like that

Melissa Schoene - DIRECT

1 specific objection that y'all had this morning on the,
2 based on the victim's photograph. But just these
3 things, I don't see any necessity to introduce both of
4 them unless y'all have got any objection.

5 BY MR. DE GRUY: No. We have no objection.

6 BY THE COURT: That would speed it up a little
7 bit.

8 BY MR. EVANS: Really, I don't think there is but
9 a couple more. You should have said this earlier.

10 BY THE COURT: I thought about it earlier.

11 END BENCH CONFERENCE.

12 (Mr. Evans and Mr. Carter confer.)

13 BY MR. EVANS:

14 Q. I'm going to hand you Exhibits 6, 8, and 9 and ask
15 if you can identify these?

16 A. Yes. Exhibits 8 -- 6, 8 and 9 are photographs that
17 were taken of the exterior of Tardy Furniture. Two are of
18 the exterior of Tardy Furniture store, and Exhibit S-6 is a
19 photograph of the inside door.

20 Q. And did you take those or--

21 A. Yes, sir. I took all three of those photographs.

22 Q. Do they truly and accurately depict what you saw at
23 that time?

24 A. Yes, sir. They do.

25 BY MR. EVANS: Your Honor, I offer these three
26 exhibits into evidence.

27 BY MR. CARTER: No objection.

28 BY THE COURT: Let them be admitted.

29 (THREE PHOTOGRAPHS REFERRED TO ABOVE PREVIOUSLY

Melissa Schoene - DIRECT

1 MARKED AS STATE'S EXHIBITS S-6, S-8 AND S-9 FOR
2 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)
3 BY MR. EVANS:

4 Q. Ms. Schoene, what was the purpose of taking the
5 photographs of the back of the store?

6 A. It's part of my general scene documentation. I
7 photograph the exterior, the perimeter of the area, and in
8 this case I did that to document the state of the exit door
9 on the back, which was closed, closed with a piece of wood
10 through the handle.

11 Q. Okay, one moment. Ms. Schoene, did you recover any
12 other pieces of evidence there at the scene?

13 A. No, sir.

14 Q. Specifically, did you have anything to do with
15 recovering any checks or paper documents or anything like
16 that?

17 A. No, sir.

18 Q. Okay. Now you have described trying to get prints
19 off the car. Was there any attempt made to get prints out of
20 the store?

21 A. Yes, sir. I did attempt to dust for fingerprints
22 the counter area as well as the safe that was in the back
23 office of Tardy Furniture. I did recover some fingerprints,
24 and when I recovered the fingerprints, typically what we use
25 is a fiberglass brush that has black powder, and that
26 enhances any hidden prints that may be there. And then we
27 will take a piece of clear tape, place it over that, and then
28 lift, literally lift the fingerprint and place it on an index
29 card or a piece of paper. I did collect five different

Melissa Schoene - DIRECT

1 latent lift cards from Tardy Furniture. And I do not know
2 how many fingerprints or partial fingerprints those cards
3 contained, but I did dust those areas for fingerprints and
4 lifted some.

5 Q. Do you know what areas the prints that, or prints,
6 partials or whatever that you recovered were from?

7 A. No, sir. I do not. That information is documented
8 on the back of the fingerprint cards, and I do not have those
9 fingerprint cards.

10 Q. Okay, are you aware -- and I'm not asking you what
11 the report says -- but are you aware of whether there was any
12 report of any findings from prints in this case?

13 A. I honestly am not.

14 Q. One second, Your Honor. Ms. Schoene, the only
15 other thing that I can think of that I would like to cover
16 with you, all of the pieces of evidence that you have
17 described - the casings, the projectiles, the live round, the
18 photographs of the shoe impressions that you took, all of
19 that, what was done with those items?

20 A. Once those items are collected by me, I returned to
21 the crime laboratory and submitted those to our evidence
22 section, and from there those item of evidence, those items
23 of evidence are logged into a vault where they are held until
24 the analyst who will be examining that particular evidence
25 comes to the vault to retrieve them.

26 Q. So your part stops at recovering it, and someone
27 else from that point does the examinations; is that correct?

28 A. Yes, sir. That's exactly right. My part in this
29 was to respond to the scene, document the scene, and collect

Melissa Schoene - DIRECT - CROSS

1 evidence and return that evidence to the crime laboratory.

2 BY MR. EVANS: Your Honor, I will tender the
3 witness.

4 BY THE COURT: Before we get started, those items
5 right there in the boxes on the table, are they in
6 evidence?

7 BY MR. EVANS: Yes, sir. They are. I am fixing
8 to put them over here.

9 BY THE COURT: That's what I wanted to do.

10 (Pill boxes in evidence were moved from counsel
11 table to the court reporter's table.)

12 CROSS-EXAMINATION BY MR. CARTER:

13 Q. Ms. Schoene, I am Ray Carter. How many doors are
14 there to Tardy's Furniture store?

15 A. How many doors inside or entrance doors?

16 Q. How many entrance doors and exit doors?

17 A. I would have to refer to various photographs that
18 have been taken, but I know that there are at least three.

19 Q. Okay, where are they located?

20 A. There is one at the entrance, and there is another
21 at the side, also in the front of the store, but slightly
22 down a little bit. It was not a main entrance, and then
23 there is one in the very back. And that is the one that I
24 photographed that had the wooden slat through it.

25 Q. Is there a side door?

26 A. There is a side door. It didn't seem to be
27 functioning at the time.

28 Q. Which side of the building was it on?

29 A. I would have to look at the sketch. I believe it

Melissa Schoene - CROSS

1 was on the south side of the building. This, Tardy Furniture
2 sat on a corner.

3 Q. Now the imprints that you photographed, they were
4 partial foot imprints; is that correct?

5 A. The photographs that I, yes, they were partial
6 footwear impressions, or they appeared to be, yes.

7 Q. And documentation and photographing of imprints and
8 impressions must be done in a certain way in order to, I
9 guess enhance them or make them visible to the eye? Would
10 you agree with that?

11 A. It depends on the substrate on which the impression
12 is left as well as the medium that transfers the actual
13 footwear impression. In this particular scenario, it was
14 worn, black. I can't think of the term for the floor. It's
15 hard square tile. At any rate, the footwear impressions were
16 made on that surface in what appeared to be blood. The best
17 way to document those particular footwear impressions was to
18 use photography, specifically black and white photography.
19 We call it, it is actually a special sort of photography. It
20 is evidence photography, and it's necessary to use black and
21 white film, a tripod, a scale, or a ruler laid down inside
22 the frame, and a detachable flash so the person collecting
23 the evidence can alter the angle of the light to better
24 enhance the photographs.

25 Q. Okay. Is it also true that the camera must be set
26 up so the film plane is parallel to the plane of the surface?

27 A. Yes, sir. That is why you need, that is why we use
28 a tripod. The tripod holds the plane of the film, which is
29 inside of the camera, parallel with the plane on which the

Melissa Schoene - CROSS

1 footwear impression is left. That's exactly right.

2 Q. Should lighting be set up at an oblique angle?

3 A. Again, yes, sir. That is the technique that I
4 described. That is when one takes the detachable flash and
5 moves it at different angles and enhances the impression by
6 changing the angle of the oblique light.

7 Q. And should you take more pictures after you change
8 the angle of the lighting?

9 A. I'm sorry?

10 Q. That was probably confusing. Let me rephrase. How
11 many photographs did you take that day?

12 A. Of the footwear impressions?

13 Q. Yes, ma'am. The best you can recall.

14 A. The best I can recall, probably two rolls of film
15 all together. Probably 40 photographs of just those three
16 impressions. I take several, I take several photographs
17 because you don't quite know at what angle -- when you are
18 altering the light, you are not quite sure which angle is
19 going to best enhance the partial impression. And in this
20 case I had three partial impressions, so I took a lot of
21 photographs that day of just those footwear impressions.

22 Q. And what is the purpose of using that scale?

23 A. The purpose of the scale in the photographs is for
24 enlargement purposes. If you can imagine, we will take
25 numerous photographs, as I have said, and then to do the
26 actual comparisons where a footwear examiner actually
27 compares a known shoe to a questioned impression, it's
28 necessary to have that questioned impression on a one to one
29 scale with the footwear, with the actual shoe. So we place a

Melissa Schoene - CROSS

1 scale, a ruler in this case, inside the photograph when we
2 are taking the photograph, so when we go to the photo lab, we
3 can say we would like an inch on the ruler to act, to equal
4 an actual inch. So that is for comparison purposes.

5 Q. Okay. I don't have many more with respect to that,
6 but did you use any kind of a chemical enhancement to,
7 chemically enhancement reagents to provide additional detail,
8 or was that necessary? Or that is something you don't do?

9 A. No, I do do that. It was not necessary in this
10 case, and because of the linoleum is the word that I was
11 looking for earlier. Because of the linoleum tile. To
12 enhance or spray some sort of chemical enhancement on
13 linoleum, we stand more of a risk of obliterating details, as
14 you can imagine, pouring liquid or even spraying liquid on a
15 linoleum surface. So no, sir; chemical enhancements were not
16 used in this case because of that reason.

17 Q. Now the three footprints that you noted and were
18 able to take pictures of, do you have any expertise that
19 would allow you to tell which direction the person was going
20 in? Which direction within the store?

21 A. I do have the expertise to do that. However, that
22 was not something that I did at the scene. I am actually a
23 certified footwear impression examiner also, and I have
24 training in that area. But at the scene my role was to
25 document and collect the evidence, not to make that judgment.

26 Q. Now with respect to the safe, you said it was
27 unlocked, but it was closed. Is that correct?

28 A. Yes, sir. It's as it's shown in this picture here.
29 It was in that position. The door was actually closed, but

Melissa Schoene - CROSS

1 when I went to open it, it did open. I didn't have to do any
2 sort of maneuvering of the lock.

3 Q. Okay. Were the contents within the store
4 disheveled, or were they neatly--

5 A. The contents within that safe were fairly neat and
6 orderly.

7 Q. So you didn't really see anything that indicated
8 conclusively that anyone, other than somebody that was
9 supposed to, had actually gone through that safe; is that
10 correct?

11 A. Could you ask that again, please?

12 Q. Yes. So you didn't really see any, based on what
13 you saw in this safe and the way the contents was arranged,
14 you couldn't conclude that somebody had actually rambled
15 through the safe, or could you?

16 A. I couldn't conclude, and it is simply no
17 conclusion. I couldn't conclude whether, if somebody had
18 gone through it. The contents of the safe were very neat and
19 orderly.

20 Q. So to make sure I'm clear, I think latent prints
21 were lifted from the car and from Tardy's Furniture store.
22 And within Tardy's Furniture store, where were they lifted
23 from?

24 A. They were located, again it would be necessary to
25 see the cards where they were labeled as to where they were
26 lifted. I did dust the surface of this safe, but as you can
27 tell from the photo, from the photograph, it is a fairly
28 non-smooth surface which is very difficult to obtain latent
29 prints off of. I also dusted the counter area that was in

Melissa Schoene - CROSS

1 the central portion of the store and did recover some prints
2 or partial prints. Again, as to how many, I'm not sure. I
3 know that I recovered enough to put on five different cards.

4 Q. Now when you got to the scene, as best you can
5 recall, tell me who you saw and who you talked to initially?

6 A. I believe the first person that I spoke with would
7 have been Chief Johnny Hargrove of the Winona Police
8 Department. And perhaps Jack Matthews and Wayne Miller, who
9 were members of the Mississippi Highway Patrol Criminal
10 Investigations Bureau.

11 Q. I notice that in one of the pictures you took, it
12 showed some keys, a key ring with keys on it. Did you see
13 those keys at any point on anyone's thumb or a pinky finger?

14 A. I don't understand. Did I -- the yellow key chain
15 that had the number 1 that was near Carmen Rigby?

16 Q. Right.

17 A. Did I ever see those on anybody's thumb or finger?

18 Q. Right.

19 A. No, sir.

20 Q. And you never saw anybody actually move the key
21 chain, I'm assuming? Is that correct?

22 A. I don't recall anybody moving the key chain.
23 Actually someone may have moved the key chain to determine
24 who the keys belonged to. I wouldn't have found that
25 strange, but as to who may have done it, the people behind
26 the crime scene tape were quite limited. So if I did observe
27 somebody looking at the keys, I don't know that I would have
28 made note of it. It's not of, it's not that strange of an
29 occurrence.

Melissa Schoene - CROSS

1 Q. Okay. Now with respect to checking shoes for the
2 surface, did you participate in that to any extent? Did you
3 check anybody's shoes to see what their soles looked like?

4 A. Yes, I did. Upon observing the footwear
5 impressions in the store that appeared to be made in blood, I
6 requested that law enforcement bring back to me everybody
7 that had been behind the scene so I could either include or
8 exclude their footwear impressions from having made those
9 bloody footwear impressions, which is very common too. We
10 will do that typically, especially if emergency medical
11 personnel has been inside. We would like to -- we will
12 collect their shoes if the footwear impressions are similar
13 to their tread marks. So yes, sir; I did request that
14 everybody that had been in the scene prior to my arrival
15 return, and there were no shoes that were similar in tread
16 pattern characteristics to the ones that were left in blood
17 there on the floor.

18 Q. Okay, as best you can recall, who came back, and
19 whose shoes did you check?

20 A. I checked all -- I checked Jack Matthews. I
21 checked the investigators that were at the scene. I checked
22 the gentleman who found the bodies, and I checked the EMT
23 personnel.

24 Q. How many EMT personnel are you speaking of?

25 A. I don't know if I have that recorded. I do know
26 that at the scene it is my protocol to look at everyone. So
27 if there were two people, I would have looked at two people.
28 If there was just one, I would have looked at one. And if
29 they were similar in nature, I would have collected it,

Melissa Schoene - CROSS

1 collected their shoes. We have sent EMT's more than once
2 home without their shoes.

3 Q. Did you make a list of the people that went in and
4 came out of the building?

5 A. I have a list of people who were at and near the
6 scene as far as law enforcement personnel.

7 Q. Okay, did you make a list or do you have a list
8 that somebody else made?

9 A. I have a list that either I or the person that was
10 working with me made. Yeah, it's my list.

11 Q. Okay.

12 A. And it lists the people who were present not, not
13 behind the crime scene tape necessarily, but were present at
14 the store at some point during the five hours that we were
15 there.

16 Q. And when you say at the store, are you talking
17 about inside the store--

18 A. No, not necessarily.

19 Q. Inside and outside?

20 A. Even people outside, yes, sir.

21 Q. And on that list did you distinguish which persons
22 had come into the store and which ones did not?

23 A. Did I distinguish in what way? Do I know who came
24 in and who didn't?

25 Q. In other words, perhaps I didn't ask the question
26 very well, but with your list, did you make some notation of
27 which persons entered the store, which ones were, in fact,
28 outside the store, around the store? What I'm trying to find
29 out is if you can tell me specifically which persons went in

Melissa Schoene - CROSS

1 the store, walked through the crime scene, or possibly could
2 have walked through the crime scene?

3 A. Chief Johnny Hargrove had secured the scene upon my
4 arrival and had said that the gentleman that had found the
5 body had been in as well as emergency medical personnel. And
6 nobody else, other than the two highway patrol investigators
7 that were there, and then once I was there and the person
8 that I worked with, no one else came behind the crime scene
9 tape, which is considered the secure part of the store, the
10 secure part of the crime scene.

11 Q. One moment. What with respect to projectiles,
12 cartridges, how many pieces all together of firearm evidence
13 did you find personally, if you recall?

14 A. Just the firearms evidence or all together?

15 Q. Yes, firearms evidence.

16 A. I collected five casings, one cartridge which is a
17 live round, two projectiles, and two fragments. And all of
18 those we have pointed out on the sketch.

19 Q. Now isn't it a fact that Carmen Rigby still had
20 money in her purse?

21 A. Yes, sir. Yes, Carmen Rigby, the purse that had
22 identification that indicated the purse belonged to Carmen
23 Rigby, there was still money in her purse, yes.

24 Q. Okay, isn't it true also that Robert Golden still
25 had money in his wallet, in his pocket?

26 A. Yes. He had money, cash bills in his wallet.

27 Q. Do you know if the other two persons still had
28 money on them?

29 A. The other two purses still had--

Melissa Schoene - CROSS

1 Q. -- Ms. Tardy and Mr. Stewart?

2 A. Mr. Stewart was not there upon my arrival.

3 Q. I'm sorry. Ms. Tardy?

4 A. Ms. Tardy's purse, your question is did Ms. Tardy's
5 purse have any money in it?

6 Q. If you know, yes.

7 A. I believe that it had a small amount of money,
8 dollar bills. Let me confirm that though. Yes, she had
9 three dollars present, which was the purse that belonged to
10 Ms. Tardy that was located in the back office.

11 Q. Okay. Now with respect to the person that asked
12 you to dust Mr. Simpson's car, would that have been Wayne
13 Miller?

14 A. Yes.

15 Q. Now ordinarily when you go to a crime scene like
16 this, do you look at the, I guess the door areas or the
17 entrance areas to see if there is some evidence of a
18 break-in?

19 A. If the store is entered when it's not open business
20 hours. Is that what you mean?

21 Q. Yes.

22 A. Yes.

23 Q. Okay, did you dust the doors or door handle, if all
24 that existed, to see if whether or not you could find
25 fingerprints there?

26 A. The door area, the area around the door and the
27 glass around the door, the metal also was not dusted for
28 fingerprints because it was a high traffic area. It's a
29 doorway. So typically in my experience, as is well

Melissa Schoene - CROSS

1 documented, areas such as that one does not typically recover
2 viable fingerprints.

3 Q. Okay, based on your experience, is it a fair
4 statement to say that fingerprints can include and exclude
5 people?

6 A. Fingerprints can identify people and exclude
7 people.

8 Q. Thank you. I think I'm finished. One second.
9 Now with respect to Doyle's car, did you find any damage to
10 the glove compartment?

11 A. There was slight damage on the top portion of the
12 glove box if you can recall from the photograph.

13 BY MR. CARTER: Okay, one moment.

14 (Defense Counsel confer.)

15 BY MR. CARTER:

16 Q. One final question and I apologize if I wasn't
17 listening. Now with respect to Doyle Nickel's [sic] car, you
18 dusted the glove compartment area or the window. Could you
19 clarify for me exactly what you did with respect to Doyle
20 Simpson's car?

21 A. Yes, sir. Again, I dusted the area around the
22 glove box, but it was not a very good surface for recovering
23 prints because it was dusty, and it was a vinyl dashboard.
24 And that vinyl dashboard had been cracked. It was not -- I
25 always like to be optimistic when dusting for fingerprints,
26 but in this case it was somewhat of a long shot to recover a
27 useful fingerprint. I dusted around the glove box area and
28 around the window area on the passenger side of that
29 particular vehicle.

Melissa Schoene - REDIRECT

1 **BY MR. CARTER:** Thank you. No further questions.

2 **BY THE COURT:** Anything else from her?

3 **BY MR. EVANS:** Very briefly.

4 REDIRECT EXAMINATION BY MR. EVANS:

5 Q. You were asked about the direction the person was
6 going. As far as direction, if you remember, were you able
7 to determine from the darkness of the blood track whether the
8 tracks were getting lighter in one direction or the other?

9 A. Yes, sir. There were three. Of A, B and C, they
10 were close to a pool of blood, and they are labeled -- "A" is
11 labeled closest to the front door meaning that "C" is the
12 footprint that is closest to the pool of blood. "C" was
13 indeed a darker impression because it had more blood on the
14 bottom of the shoe when it was transferred to that position.
15 And then "B" was slightly fainter, and then "A" was even more
16 fainter. So from faint to dark, "A" was the faintest, and
17 "C" was the darkest. However, that doesn't tell me the
18 direction per se or the direction of the tread. I can just
19 tell you what is darker and lighter.

20 Q. Right.

21 **BY MR. EVANS:** That's all we have, Your Honor.

22 We would ask that she be excused.

23 **BY MR. CARTER:** No objection.

24 **BY THE COURT:** You are finally excused. You are
25 free to go.

26 **BY THE WITNESS:** I certainly appreciate that.

27 WITNESS EXCUSED.

28 **BY THE COURT:** Who have you got next?

29 **BY MR. EVANS:** Probably Balash.

Bench Conference

1 **BY THE COURT:** How long?

2 **BY MR. EVANS:** Pretty good while.

3 **BY THE COURT:** Okay, well, let me see y'all up
4 here.

5 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
6 JURY AS FOLLOWS:)

7 **BY MR. EVANS:** All of this is firearms stuff.

8 **BY THE COURT:** Okay.

9 **BY MR. EVANS:** He can be back tomorrow, though he
10 don't want to.

11 **BY THE COURT:** Well, he is mine now. I have got
12 him in Mississippi. Well, why don't we start in the
13 morning. That suit y'all? Quit now and start in the
14 morning?

15 **BY MR. CARTER:** What time were you suggesting?
16 8:00?

17 **BY MR. DE GRUY:** Starting in the morning.

18 **BY THE COURT:** The next witness is going to be a
19 firearms man. That is going to take us a while, an
20 hour or an hour and a half. That will put us to 6
21 o'clock if we do that.

22 **BY MR. EVANS:** Yeah, it is going to put us later
23 than you need to be too.

24 **BY MR. CARTER:** I prefer tomorrow.

25 **BY THE COURT:** Yeah, my best friend's mother
26 died, and I have got to go tend to that. So if it's
27 all right with y'all, we just quit until 9:00 in the
28 morning.

29 **BY MR. CARTER:** Yes, sir.

Court recessed on 2/6/04

1 **BY THE COURT:** 9 o'clock? Okay. All right.

2 END BENCH CONFERENCE.

3 **BY THE COURT:** Ladies and gentlemen, the next
4 witness we are going to have will be like the last
5 couple. It will take a while to do, so we are going
6 to break for the day and start again in the morning at
7 9 o'clock. I will give you the same instructions that
8 I have given you before. You are not to form any
9 opinions about this case, nor are you to talk about it
10 amongst yourselves at this time. I'm going to ask
11 you, if you will, go to the jury room for a few
12 minutes. And then the bailiffs will take you back to
13 Grenada.

14 (Off the record briefly until a question came up as
15 to what the jurors should do with their note pads.)

16 **BY THE COURT:** Usually what I do is let the
17 bailiffs keep them all, but since y'all are
18 sequestered, just take them with you to your room. Of
19 course, they are for your use only, and so you take
20 them, and you keep up with them. Okay.

21 (COURT WAS RECESSED FOR THE DAY ON 2/6/04 AT 4:23 PM.)
22
23
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Bill Thornburg - DIRECT

(ON FEBRUARY 7, 2004, COURT WAS OPENED WITH ALL
COUNSEL AND THE DEFENDANT PRESENT.)

BY THE COURT: I'm ready for the jury.

JURY ENTERS THE COURTROOM.

BY THE COURT: Who do you have first?

BY MR. HILL: We call Sheriff Bill Thornburg,
Your Honor.

BILL THORNBURG,

a white male called to testify as a witness by the State of
Mississippi, having first been duly sworn, testified as
follows, to-wit:

BY THE COURT: State your name, please, sir.

BY THE WITNESS: Bill Thornburg.

BY MR. HILL: May I proceed, Your Honor?

BY THE COURT: Yes.

DIRECT EXAMINATION BY MR. HILL:

Q. Mr. Thornburg, what is your, or do you have an
official elected position here in Montgomery County,
Mississippi?

A. I do. I am Sheriff, Montgomery County.

Q. And how long have you been in law enforcement,
Sheriff?

A. Just a little over 28 years.

Q. Were you in the employ of the Montgomery County
Sheriff's Department back in July of 1996?

A. Yes, sir. I was.

Q. I want to ask you especially if you recall the
morning of July the 16th, 1996?

A. Yes, sir. I do.

Bill Thornburg - DIRECT

1 Q. Can you tell us where you were at about 10:20 that
2 morning?

3 A. I was here in the courthouse. If my memory is
4 correct, I was in the Circuit Clerk's office.

5 Q. And did you receive any calls about that time
6 asking for assistance or alarming you?

7 A. I did.

8 Q. Would you tell us what that was, please?

9 A. I got a call that there had been a shooting at
10 Tardy Furniture Company.

11 Q. What do you do upon hearing that news?

12 A. I ran through the courtroom. I believe we had had
13 justice court. I ran through the courtroom to see if there
14 was any officers in here. I went by the justice court office
15 and told Officer Williams that there had been a shooting in
16 Tardy's.

17 Q. What Officer Williams?

18 A. D-43, he is a Mississippi highway patrolman.

19 Q. Officer James Taylor Williams?

20 A. Yes, sir.

21 Q. What did you do then, sir?

22 A. I ran and got in my patrol car and went straight to
23 Tardy Furniture Company.

24 Q. What did you observe upon arriving at Tardy
25 Furniture Company?

26 A. When I got there, I believe it was Chief Hargrove
27 was there and maybe one other officer.

28 Q. What did you do then, sir?

29 A. I went inside the building.

Bill Thornburg - DIRECT

1 Q. Tell -- all right, tell the ladies and gentlemen,
2 if you will, Sheriff, what it was you saw when you went
3 inside Tardy Furniture Company on the morning of July 16,
4 1996?

5 A. I went back about middleways of the place, and
6 there was three bodies on the floor.

7 Q. Did you know those people?

8 A. Yes, sir. I did.

9 Q. Would you tell us who they were, please?

10 A. It was Ms. Bertha Tardy, Mr. Goldman or Golden, I
11 believe it was. And uh.

12 Q. Did you see Ms. Rigby there?

13 A. That's right. That was the third one, Ms. Rigby.

14 Q. At that time when you arrived, was there a fourth
15 person in the building at that time?

16 A. A fourth body?

17 Q. Yes, sir.

18 A. No, sir.

19 Q. Okay. So you didn't see Derrick Stewart when you
20 got there?

21 A. No, sir; I didn't. They had already left with him.

22 Q. Okay. While you were in the store, did you notice
23 any firearms evidence on the floor there?

24 A. Yes, sir. There was some empty hulls laying on the
25 floor.

26 Q. Were you able to tell what apparent caliber they
27 were?

28 A. Yes, sir. They was .380 caliber hulls.

29 Q. While you were there, Sheriff, did you notice any

Bill Thornburg - DIRECT

1 footwear impressions, or we might call them tracks or
2 footprints in the store?

3 BY MR. CARTER: Your Honor, I object to the
4 leading.

5 BY THE COURT: Don't lead him.

6 BY MR. CARTER: I hate to do it, but if he will
7 stop doing it, I won't object.

8 BY MR. HILL:

9 Q. What else, if anything, took your, received your
10 interest at that time, Sheriff?

11 A. There was a pretty good pool of blood there on the
12 floor with some footprints around in the edge of the blood.

13 Q. Okay, now I want to ask you specifically about
14 those footprints. Do you know of your own personal knowledge
15 whether anybody else was aware of the presence of those
16 footprints?

17 A. I assume they were, but you know, I can't say that
18 they were aware of the footprints.

19 Q. You didn't talk to anybody about them?

20 A. No, sir.

21 Q. Did you go near those or have anything to do with
22 those prints?

23 A. No, sir.

24 Q. So can you say affirmatively whether or not they
25 were your tracks in the blood?

26 A. They definitely weren't my tracks. I didn't, I
27 didn't get anywhere around the blood.

28 Q. Okay. And what kind of footwear were you wearing
29 that day, Sheriff?

Bill Thornburg - DIRECT

1 A. I wear western boots.

2 Q. What we call cowboy boots?

3 A. Yes, sir.

4 Q. What kind of sole on the bottom?

5 A. Slick sole.

6 Q. I'm sorry?

7 A. Slick soles.

8 Q. Can you tell us about the weather that morning?

9 What kind of weather was it that morning?

10 A. It was hot.

11 Q. Just a regular hot--

12 A. -- just hot July day. And that morning it was real
13 hot.

14 Q. What about the weather that afternoon?

15 A. It came a thunder shower, pretty good thunder
16 shower that afternoon.

17 Q. Did you have occasion while you were at the Tardy
18 Furniture store to get a second report of some notable
19 activity?

20 A. Yes, sir. I did.

21 Q. What was that, please, sir?

22 A. I got a call that a car had been broken into at
23 Angelica.

24 Q. What is Angelica? What was Angelica?

25 A. It was, it's a factory where they made uniforms,
26 clothing.

27 Q. And about how far was that from where you were?

28 A. I would say it's probably close to a mile.

29 Q. Okay. And so what did you do when you got the

Bill Thornburg - DIRECT

1 report? What did you say the nature of the report was at
2 Tardy?

3 A. That a car had been broken into and a pistol stolen
4 out of it.

5 Q. Did you go there to investigate?

6 A. I did.

7 Q. What did you do when you arrived at Angelica?

8 A. I went into the office, and I believe I talked to a
9 Ms. Pauline Vance and told her I had gotten a call that a car
10 had been broken into down there.

11 Q. Did Ms. Vance know anything about the break-in?

12 A. She did not.

13 Q. Were you able to ascertain at the time you first
14 arrived whose car had been broken into?

15 A. I did. It was Doyle Simpson's car had been broken
16 into.

17 Q. Was Mr. Simpson present at the time you arrived?

18 A. He was not.

19 Q. Did you have any information as to where he had
20 gone?

21 A. I didn't. I didn't have any information at that
22 time where he had gone.

23 Q. Did you later obtain that information?

24 A. I did.

25 Q. While you were there, did you ever see Mr. Simpson?

26 A. I did.

27 Q. How long was it after you got there before he
28 arrived?

29 A. Probably 20 minutes or so.

Bill Thornburg - DIRECT

1 Q. What did you do upon Mr. Simpson, Mr. Doyle Simpson
2 getting back to Angelica?

3 A. What did --

4 Q. Did you talk to him when he came back?

5 A. I did.

6 Q. What information did you have from him about his
7 complaint? What was the complaint that he was making?

8 A. He said his car had been broken into.

9 BY MR. CARTER: Object to hearsay.

10 BY THE COURT: Overruled.

11 BY MR. HILL:

12 Q. Go ahead, Sheriff.

13 A. And a gun taken out of it.

14 Q. Did he say what kind of gun had been stolen?

15 A. He told me it was a .380 caliber semi-automatic
16 weapon. He didn't know the brand name.

17 Q. Did you have an opportunity to look at the car that
18 he said had been broken into that the weapon was stolen from?

19 A. I did.

20 BY MR. HILL: Court indulge me one minute,
21 please, Your Honor.

22 (Counsel gets out large exhibit.)

23 BY MR. HILL:

24 Q. Sheriff, I'm just going to call your attention, if
25 I may, to State's Exhibit number 99A, 100A and 101A, and ask
26 if you know what those are photographs of, sir?

27 A. That's the car that Doyle Simpson drove and he told
28 me had been broken into.

29 Q. I call your attention to photograph 101, this one

Bill Thornburg - DIRECT

1 on the bottom here. Can you see it from where you are
2 sitting?

3 A. Yes, sir.

4 Q. What is that a photograph of?

5 A. That's the glove box of his car, the inside there.

6 Q. Did you notice any apparent damage to the lid of
7 that glove box?

8 A. It was. It had some pry marks on it where
9 somebody, looked like somebody took a screwdriver or
10 something and pried it open.

11 Q. Sheriff, after examining Mr. Simpson's car, did you
12 ever have an occasion to go to Mr. Simpson's house?

13 A. Yes, sir. I did.

14 Q. And what was the purpose for you going there? Why
15 did you go there?

16 A. The weapon that was stolen out of his car was a
17 .380. The hulls that was in the store were .380 hulls. And
18 I went out there to try to find some projectiles or maybe
19 some hulls that--

20 Q. What information did you have that there might be
21 some hulls or projectiles at Doyle Simpson's house?

22 A. He had told me that --

23 BY MR. DE GRUY: --Your Honor, we are going to
24 ask for a continuing objection to this hearsay.

25 BY THE COURT: Okay, the first part wasn't
26 hearsay. This is. Sustained.

27 BY MR. HILL:

28 Q. What were you looking for when you went to
29 Mr. Simpson's house?

Bill Thornburg - DIRECT

1 A. Looking for some projectiles out of a .380 weapon.

2 Q. All right, and where specifically when you got
3 there, Sheriff, where specifically did you look for those
4 projectiles?

5 A. There was a cedar post down behind his house that
6 was about like a cross tie really. It was about a 12 by 12
7 looked like, and it had a notch cut out of it. And they had
8 been shooting at bottles, cans, so forth. And there was
9 holes in the post where the bullets had gone in the post.

10 Q. So are you saying that you were able to observe
11 some bullet, what appeared to be bullet holes in it?

12 A. Yes, sir.

13 Q. When you saw those bullet holes, what did you do
14 then?

15 A. I took my pocket knife and whittled out on, in the
16 edge of the post where one bullet had gone in. I recovered a
17 projectile out of that post.

18 Q. Sheriff, I want-- may I approach the witness, Your
19 Honor?

20 BY THE COURT: All right.

21 (Mr. Hill shows item to Defense Counsel.)

22 BY MR. HILL:

23 Q. Sheriff, I'm going to show you what has been marked
24 for identification as State's Exhibit number 82. Would you
25 examine that item, please?

26 A. (Pause while witness complies.) Okay.

27 Q. Do you recognize what that item of evidence is,
28 sir?

29 A. It looks like the projectile that I recovered out

Bill Thornburg - DIRECT

1 of that cedar post.

2 Q. And how do you recognize it?

3 A. Well, it just looks like the same projectile to me.

4 Q. Do you see any markings on the container that are
5 familiar to you?

6 A. Yes, sir. I initialed this. I put it in an
7 envelope, and I initialed it, SO-2. That was my position at
8 that time.

9 Q. Okay, and did you date it?

10 A. Yes, sir.

11 Q. What was the date that you recovered that bullet?

12 A. 7/19/96.

13 Q. So that would be three days later?

14 A. Yes, sir.

15 Q. After the scene at Tardy's?

16 A. Yes, sir.

17 Q. Is that the projectile that you yourself cut from
18 the post at Doyle Simpson's house?

19 A. Yes, sir.

20 Q. What did you do with it, Sheriff, after you
21 recovered that bullet?

22 A. I carried it to EOC building where I gave it to
23 Investigator Matthews.

24 Q. And the purpose of giving it to him was for what?

25 A. To carry to the crime lab.

26 BY MR. HILL: Your Honor, we ask that State's
27 Exhibit number 82 be received into evidence.

28 BY MR. CARTER: No objection.

29 BY THE COURT: Let it be admitted.

Bill Thornburg - DIRECT

1 (BULLET FROM DOYLE SIMPSON'S POST PREVIOUSLY MARKED
2 AS STATE'S EXHIBIT S-82 FOR IDENTIFICATION WAS NOW RECEIVED
3 IN EVIDENCE.)

4 BY MR. HILL:

5 Q. Sheriff, tell us if you will, please, who directed
6 you to go to the post where you cut that bullet out, State's
7 Exhibit number 82?

8 BY MR. DE GRUY: Your Honor, we are going to
9 object. That is hearsay.

10 BY THE COURT: What was your question again?

11 BY MR. HILL: Who directed him to the post at
12 Doyle Simpson's house?

13 BY THE COURT: Overruled.

14 BY MR. HILL:

15 Q. Who directed you to the post at Doyle Simpson's
16 house?

17 A. I really can't remember who actually directed me
18 out there.

19 Q. I don't mean going directions. I mean who, after
20 talking to who did you need to go there?

21 A. I talked to Doyle.

22 Q. And after that first time that you talked to Doyle
23 and after you recovered that first bullet, did you have
24 occasion to go back a second time to Doyle Simpson's house?

25 A. Yes, sir. I did.

26 Q. Would that be on August the 1st of '96?

27 A. Yes, sir.

28 Q. Who, if anybody, went with you when you went back
29 to Doyle's a second time?

Bill Thornburg - DIRECT

1 A. Investigator Jack Matthews and I went back out
2 there.

3 Q. And what were you hoping to be able to do when you
4 went that second time?

5 A. Find another projectile or some more projectiles.

6 Q. When you were there the first time, had you seen
7 more than one hole in the post?

8 A. Yes, sir.

9 Q. Okay. I want to hand you --

10 (NOTE: Man coming in back of courtroom stumbles
11 and makes a loud noise. Pause)

12 BY THE COURT: Go ahead, Mr. Hill.

13 BY MR. HILL:

14 Q. I want to hand you, Sheriff, State's Exhibit 81 for
15 identification and ask if you recognize this item, please,
16 sir?

17 A. Yes, sir.

18 Q. Would you tell us what that is in that package?

19 A. That's another projectile that we recovered from
20 the post on August 1st.

21 Q. Okay. And the "we" that recovered that was who?

22 A. Jack Matthews and myself.

23 Q. So you were actually physically present and
24 observed that being cut from the post?

25 A. Yes, sir.

26 BY MR. HILL: I would ask that State's Exhibit
27 number 81 be received into evidence.

28 (Exhibit 81 shown to Defense Counsel.)

29 BY MR. CARTER: Your Honor, I object to this

Bill Thornburg - DIRECT

1 particular one. I don't see any signature that
2 belongs to Mr. Thornburg or Mr. Matthews. Other than
3 that, no objection.

4 BY MR. HILL: I can ask him about the writing on
5 it, Your Honor.

6 BY THE COURT: Well, go ahead and ask him.

7 BY MR. HILL:

8 Q. Sheriff, do you know who packaged this item of
9 evidence?

10 A. Jack Matthews.

11 Q. Were you present when it was packaged?

12 A. Yes, sir.

13 Q. Do you recognize the writing on there?

14 A. Yes, sir.

15 Q. Is that the bullet that you and Jack Matthews
16 recovered from the post at Doyle Simpson's house in his back
17 yard?

18 A. Yes, sir.

19 BY MR. HILL: We renew our offer of evidence,
20 Your Honor, State's Exhibit 81.

21 BY MR. CARTER: Same objection.

22 BY THE COURT: Overruled. Let it be admitted.

23 BY MR. CARTER: What exhibit was it? I'm sorry.

24 BY MR. HILL: 81.

25 (ANOTHER BULLET FROM DOYLE SIMPSON'S POST
26 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-81 FOR IDENTIFICATION
27 WAS NOW RECEIVED IN EVIDENCE.)

28 BY MR. HILL:

29 Q. Now Sheriff, did you ever have an occasion during

Bill Thornburg - DIRECT

1 your participation in the investigation of this case to learn
2 where the Defendant Curtis Flowers was residing at the time
3 of the Tardy murders?

4 A. Yes, sir.

5 Q. And can you tell us what street and what city that
6 was located here?

7 A. Here in Winona. I believe it was McNutt Street.

8 Q. Did you go to Doyle's house at any -- I'm sorry;
9 strike that. Did you go to Mr. Curtis Flowers' house at any
10 time in the early stages of this investigation?

11 A. Yes, sir.

12 Q. Do you recall who went with you the first time?

13 A. I believe Jerry Butler went with me.

14 Q. And when you and Mr. Butler -- and for the record,
15 who was Mr. Butler? What was his position at the time?

16 A. He was an investigator.

17 Q. For the Sheriff's office?

18 A. Yes, sir.

19 Q. When you and Mr. Butler went to the Defendant's
20 residence the first time, what were you looking for?

21 A. We were looking for some tennis shoes or gym shoes.
22 Some people call them gym shoes, tennis shoes.

23 Q. When you searched the house, did you find the shoes
24 that you were looking for?

25 A. No, sir.

26 Q. Did you notice anything else that you recalled that
27 you did not seize that day?

28 A. Yes, sir. There was a box, a shoe box, tennis shoe
29 box in a chest of drawers.

Bill Thornburg - DIRECT

1 Q. In what part of the house was this chest of drawers
2 located where you saw the tennis shoe box?

3 A. Entering the front door, turn left and go down a
4 hallway. It would have been the back bedroom on the right
5 hand side.

6 Q. Did you yourself see the shoe box in the chest, in
7 the drawer--

8 A. Yes, sir.

9 Q. -- that was part of the chest of drawers?

10 A. Yes, sir.

11 Q. What else besides the box was in that drawer?

12 A. Wasn't anything but the box in that drawer.

13 Q. Did you seize or recover the box that day?

14 A. No, sir.

15 Q. Did you ever go back to the house sometime later?

16 A. I did.

17 Q. And who was present with you when you went back to
18 the house?

19 A. Jerry Butler.

20 Q. And why did you go back to the house that second
21 time?

22 A. We learned that that shoe box might be important in
23 this investigation, so we went back and retrieved it.

24 Q. Okay. I want to show you this shoe box that has
25 been marked as State's Exhibit 79A for identification and ask
26 if you would look at that, please, and tell the Court and the
27 ladies and gentlemen of the jury whether or not you recognize
28 that particular shoe box?

29 A. Yes, sir. I do.

Bill Thornburg - DIRECT

1 Q. Okay. And will you tell us how you recognize it?

2 A. It has got my initials on it, the date and time
3 that I received it.

4 Q. Would you tell us what day and time you recovered
5 that shoe box?

6 A. It was August the 14th, 1996, at 2:17 PM.

7 Q. Will you tell us what the -- well, is that the box
8 that you recovered?

9 A. Yes, sir.

10 BY MR. HILL: I ask that it be received, Your
11 Honor. That is State's Exhibit number 79A.

12 BY MR. CARTER: Not yet. May I see it?

13 (Pause while Mr. Carter looks at the exhibit.)

14 BY MR. CARTER: No objection.

15 BY THE COURT: Let it be admitted.

16 (FILA GRANT HILL II MID SHOE BOX PREVIOUSLY MARKED
17 AS STATE'S EXHIBIT S-79A FOR IDENTIFICATION WAS NOW RECEIVED
18 IN EVIDENCE.)

19 BY MR. HILL:

20 Q. Sheriff, will you tell us what kind of shoe box
21 that is, sir?

22 A. Well, it's, undoubtedly it's a Fila tennis shoe,
23 but it is M's Grant Hill number II, MID, ten and a half
24 tennis shoe.

25 Q. Okay. And is it labeled as such like that on the
26 box?

27 A. Yes, sir.

28 Q. I believe it has got a label on each end, doesn't
29 it?

Bill Thornburg - DIRECT

1 A. Yes, sir.

2 Q. Sheriff, I think I want to kind of back up a little
3 bit. When you were at Angelica talking to the people in the
4 office there, did you see somebody running?

5 A. Yes, sir.

6 Q. And who was that?

7 A. Emmitt Simpson.

8 Q. And what did you do when you saw him running?

9 A. I went out the front door and went to running
10 behind him. When I got out the front door, he had already
11 gone on around the east end of the building. Officer
12 Williams got in his car, and when I got to the back, he was
13 already down to the loading dock.

14 Q. Was he working there?

15 A. I believe he was working. I don't know -- it
16 wasn't-- I don't think he worked for Angelica, but I believe
17 they had some kind of little old business in the back end of
18 that same building.

19 Q. I guess my question would be was he working at some
20 business there on those--

21 A. Yes, sir.

22 Q. --premises or adjacent premises?

23 A. Yes, sir.

24 Q. And when you got up to him, did he try to run or
25 anything like that, or was he evasive in any way?

26 A. No. He was sitting there on-- he had run up and
27 sat down on the dock, loading dock.

28 Q. Did you speak with him to ascertain why he was
29 running and what he was doing and all that?

Bill Thornburg - DIRECT - CROSS

1 A. He was just running, he said but.

2 Q. That aroused your curiosity when you saw him
3 running?

4 A. Right.

5 Q. Because of that, did you search anything?

6 A. We did. We asked him about searching his van.

7 Q. Did he refuse permission for y'all to search?

8 A. He said, "Help yourself. It's parked around
9 front."

10 Q. Had no problem with it?

11 A. No, sir.

12 Q. Did he answer all your questions?

13 A. Yes, sir.

14 Q. And after talking to him, were you satisfied with
15 his responses?

16 A. Yes, sir. I was.

17 BY MR. HILL: Court indulge me just one minute,
18 Your Honor.

19 (State's Counsel confer.)

20 BY MR. HILL: Your Honor, at this time we would
21 tender the Sheriff in cross-examination.

22 CROSS-EXAMINATION BY MR. CARTER:

23 Q. How are you doing, Mr. Thornburg? Now this Exhibit
24 number 81 that we talked about a few minutes ago, did you see
25 your signature on there?

26 A. No, sir. My signature wasn't.

27 Q. Did you see Mr. Matthews' signature on it?

28 A. Yes, sir.

29 Q. Could you show it to me?

Bill Thornburg - CROSS

1 A. Yes, sir.

2 Q. I missed it apparently.

3 A. Right there. Jack Matthews, B-42.

4 Q. Oh, okay, thank you. I guess the first thing I
5 want to go to is the glove compartment. Had you seen that
6 glove compartment prior to the day that you saw it after it
7 had been reportedly broken into?

8 A. The day that he said it was broken into was my
9 first time to ever look at it.

10 Q. So you don't know what it looked like before that
11 day; is that correct?

12 A. I do not.

13 Q. And for all you know, it could have still had those
14 prior marks on it before then; right?

15 A. It could have. I had never seen it before.

16 Q. I believe from, if I'm not mistaken, you said once
17 you got to Tardy's, you saw Mr. Hargrove and one other
18 officer?

19 A. Yes, sir.

20 Q. Was that a Winona Police Department, or was it a
21 Sheriff's officer?

22 A. Police officer.

23 Q. Would it have been Mr. Townsend?

24 A. Could have been. I don't remember.

25 Q. Now how far did you go into the store? Did you
26 walk the whole store?

27 A. I went all the way back to the counter where they
28 conducted business.

29 Q. Were you given any advice by anybody once you got

Bill Thornburg - CROSS

1 there?

2 A. No, sir.

3 Q. So nobody told you to avoid certain rooms?

4 A. Avoid what?

5 Q. Did anyone tell to you avoid going into certain
6 rooms or certain locations?

7 A. No, sir, but being an officer of the law and helped
8 work crime scenes before, you know, I knew pretty well what
9 to do there.

10 Q. Okay, but to be clear, no one told you to, where
11 you could go or could not go; is that correct?

12 A. Well, I don't remember anybody telling me that.
13 They could have.

14 Q. Did you make any notes? Did you make a statement,
15 a written statement?

16 A. There in the store?

17 Q. Regarding -- did you make a written statement at
18 any point memorializing and setting forth exactly what you
19 did at Tardy's Furniture store?

20 A. I don't remember making one. I may have.

21 Q. Now once you went to Angelica's, Doyle wasn't
22 there. Is that correct?

23 A. Correct.

24 Q. He came up about how long thereafter?

25 A. Probably 15 or 20 minutes. It was, it wasn't all
26 that long.

27 Q. Now this post that you keep talking about where you
28 found the projectile, I think, by yourself?

29 A. Uh-hum.

Bill Thornburg - CROSS

1 Q. On one occasion and the next time with
2 Mr. Matthews. Did anyone, did you take a picture of that?

3 A. I didn't.

4 Q. Do you know if Mr. Matthews did upon the second
5 time that you went there?

6 A. I can't recall. He may have.

7 Q. Do you remember seeing any pictures of the post?

8 A. No, sir.

9 Q. Now you had a chance to see both Doyle Simpson and
10 Emmitt Simpson; is that correct?

11 A. Yes, sir.

12 Q. Both of them are kind of medium skin to light
13 skinned people; is that correct?

14 A. Yes, sir.

15 Q. Tell me a little more about how Doyle looks, since
16 I haven't seen him, with respect to his height, weight and
17 dress on that occasion?

18 A. To my recollection, Emmitt is a little taller than
19 Doyle.

20 Q. How tall is that? I have no idea.

21 A. Probably 5'10". Somewhere in that neighborhood.

22 Q. Okay. How tall is Doyle?

23 A. Doyle looked, he is probably around 5'8", 5'9".

24 Q. So do you have to look real hard to see a
25 difference in their height, or is it pretty obvious? From
26 what you told me, it sounds like it's pretty close.

27 A. Yeah. I don't know.

28 Q. Do you know how they were dressed on that occasion?

29 A. No, sir. I don't.

Bill Thornburg - CROSS

1 Q. Now upon your talking to Doyle and being a police
2 officer, do you know if Doyle reported his gun as being
3 stolen to the police before you got there?

4 A. To the police?

5 Q. Right.

6 A. I don't have any idea if he reported it to the
7 police or not.

8 Q. Okay, what caused you to go to Angelica?

9 A. The Sheriff's office called me and told me there
10 had been a break-in down there in the -- well, from stolen
11 out of a car.

12 Q. Did you inquire from Doyle whether he had reported
13 his gun as being stolen?

14 A. No, I didn't. I assumed that he reported it.
15 Somebody did.

16 Q. Now where did Doyle tell you he got the gun from,
17 or did he tell you?

18 A. No, sir. He didn't tell me. Well, I believe he
19 did. He told me he bought that gun in Louisiana.

20 Q. Okay. And you found that to be not correct, didn't
21 you?

22 A. Right.

23 Q. Where did he get it from?

24 A. I believe he had bought it here in, from somebody
25 here in Montgomery County.

26 Q. Now at the time you saw Emmitt, he was running and
27 heavily perspiring; is that correct?

28 A. He was sweating. It was hot. It was July.

29 Q. What time did it rain that day?

Bill Thornburg - CROSS

1 A. I believe it rained sometime after lunch, or it
2 might have been a little before lunch; I don't know. But I
3 remember it raining.

4 Q. Now this substance that you saw on Emmitt, was it
5 rain, or was it sweat, or were you able to distinguish?

6 A. It wasn't raining at that time; no, sir.

7 Q. Okay. What time was this as best you can recall?
8 I realize you don't have your report.

9 A. It was somewhere between 10:00 and 11:00. I don't
10 know just what time.

11 Q. Did anyone check your shoes for the footprints?

12 A. May have. They were checking some shoes, shoe
13 soles.

14 Q. I know but--

15 A. I don't remember. They probably did.

16 Q. Well, if you don't--

17 A. But I wear slick sole shoes.

18 Q. Can you make me understand this? If you -- well, I
19 will accept that for the time being. So your testimony is
20 you don't really know whether they checked your shoes or not;
21 is that correct?

22 A. I don't know whether they checked mine or not.
23 They were checking some shoe prints.

24 Q. Okay, I don't doubt that they were checking some,
25 but what I'm concerned about was your shoes. But you don't
26 remember? Is that the answer?

27 A. Like I said, they may have. I don't remember
28 whether they did or not.

29 Q. In fact, Doyle told you that he got the gun from a

Bill Thornburg - CROSS

1 relative; is that correct?

2 A. Yes, sir, in Louisiana.

3 Q. And do you know if that relative was ever
4 contacted?

5 A. I don't know. They may have been. I didn't
6 contact them.

7 Q. One moment. Now the first time you went to
8 Connie's house, you didn't get the shoe box; is that correct?

9 A. Correct.

10 Q. The first time you went there, did you know what
11 kind of shoe left that print in the store?

12 A. It was a Fila shoe.

13 Q. You knew that?

14 A. Yes, sir.

15 Q. When you first went to Connie's house?

16 A. Yes, sir.

17 Q. Was that on July 16th when you first went?

18 A. I can't remember what day the first day I went. I
19 don't know.

20 Q. Okay. How did you know it was a Fila shoe by the
21 time that you went there?

22 A. It had been established through some other people
23 that it was a Fila tennis shoe track.

24 Q. Do you know if it had been established by the crime
25 lab at that point that you went there the first time?

26 A. No, I don't. I don't know whether it was
27 established or not.

28 Q. If you knew it was a Fila tennis shoe the first
29 time, why didn't you get the box the first time?

Bill Thornburg - CROSS

1 A. I didn't think it was any significance at that
2 time.

3 Q. You didn't? Now when you went to Connie Moore's
4 house the first time, you said it was you and Officer Butler,
5 I believe; is that correct?

6 A. Yes, sir.

7 Q. And I apologize; maybe I wasn't listening, but the
8 first time you went, why did you say you went there?

9 A. Was looking for shoes, tennis shoes.

10 Q. Did you get any tennis shoes?

11 A. No, sir.

12 Q. You searched the whole house, and you didn't find a
13 single pair of tennis shoes?

14 A. Well, we didn't find any Fila tennis shoes.

15 Q. And so you did find some other tennis shoes?

16 A. Yes, sir.

17 Q. But you didn't take those?

18 A. No, sir.

19 Q. How many pair did you find?

20 A. I don't have any idea.

21 Q. You didn't make no notes? Were you looking for any
22 clothing the first time you went?

23 A. Clothing?

24 Q. Clothes of any type?

25 A. I wasn't; no, sir.

26 Q. So a murder had occurred -- and the first time you
27 went, did you know whether Curtis Flowers lived there or not?

28 A. Yes, sir. The first time I went, yes, sir.

29 Q. So you went to the home of a suspect, and you still

Bill Thornburg - CROSS

1 looked for only tennis shoes; is that correct?

2 A. That's all I was looking for that day. Yes, sir.

3 Q. Okay. How long thereafter did you go back again?

4 A. I believe I recovered this box, was there on the
5 19th, I believe. I recovered this box, I believe it was
6 August the 1st. (Witness looks at the shoe box.) The 14th
7 of August. I'm sorry.

8 Q. Okay, when you went back on August the 14th, did
9 you recover anything besides the box?

10 A. No, sir.

11 Q. Did you look for any clothing or any other evidence
12 at that time?

13 A. No, sir.

14 Q. Did you ever look for a gun at any point?

15 A. Yes, sir. I did.

16 Q. Did you look in Mr. Flowers' house for a gun? Did
17 you search his house for a gun?

18 A. Not that day; no, sir.

19 Q. Did you search Mr. Flowers' house for a gun any
20 day?

21 A. I didn't. No, sir.

22 Q. I'm sorry; you didn't?

23 A. I didn't.

24 Q. Now when you went back and got the shoe box, did
25 you really search the house that day?

26 A. No, sir.

27 Q. How did you get the shoe box?

28 A. Connie went back there and got it for me.

29 Q. Who else lived in the house with Connie Moore?

Bill Thornburg - CROSS

1 A. Curtis is the only one I know of.

2 Q. Neither time you went, you didn't see the children?

3 A. She may have had some children there that, when I
4 went back after the box.

5 Q. So you might have seen some children, but you
6 didn't think they lived there? Is that what you are telling
7 me?

8 A. I don't know whether they lived there or not.

9 Q. Okay. But haven't you since discovered that Connie
10 had two boys? Do you know that?

11 A. Yes, sir.

12 Q. Fila Grant Hill tennis shoes were a pretty popular
13 brand of shoes back then; is that correct?

14 A. Yes, sir.

15 Q. Do you think it is likely that there was just one
16 pair in Winona?

17 BY MR. HILL: Objection. Calls for him to
18 speculate.

19 BY THE COURT: Sustained.

20 BY MR. CARTER:

21 Q. What did you do with the shoe box, Mr. Thornburg?

22 A. What did we do with it?

23 Q. Yes.

24 A. We sent it to the crime lab.

25 Q. Did you send it, or did you take it?

26 A. I didn't take it.

27 Q. Were you able to determine when that shoe box came
28 into Connie's possession or into that house?

29 A. No, sir.

Bill Thornburg - CROSS

1 Q. Were you able to determine the circumstances under
2 which it came into the house?

3 A. No, sir.

4 Q. Did you ask?

5 A. I didn't. No, sir.

6 Q. Do you know whether there was any shoes in that box
7 when it came into the house?

8 A. No, sir. I don't know that.

9 Q. Now once you got to Angelica's that day, where was
10 Doyle Simpson when you first saw him?

11 A. He drove up at the front at the office there.

12 Q. Okay, did you interview him on the outside, or did
13 you go on the inside of the building?

14 A. He came inside.

15 Q. Who was present when you talked to him?

16 A. I believe when we first talked to him, it was just
17 myself and James Taylor Williams, D-43.

18 Q. Now when you were at Angelica's before Doyle
19 Simpson got back, didn't you learn that someone from Angelica
20 had reported the gun missing other than Doyle?

21 A. May have. I don't know. I got my original call
22 from the Sheriff's office that a car had been broken into and
23 a gun stolen. As to who reported it, I don't know.

24 Q. Thank you. Now you also went and looked at Doyle's
25 car. Did you have it impounded to the Sheriff's Department
26 or someplace, or somebody else did that?

27 A. Somebody else did. I didn't.

28 BY MR. CARTER: One moment. I think I may be
29 finished.

Bill Thornburg - CROSS

1 (Defense Counsel confer.)

2 BY MR. CARTER:

3 Q. Mr. Thornburg, where were you -- well, let me see
4 if I can cut this short. I believe you were in justice court
5 when you got the call that something had gone wrong at
6 Tardy's; is that correct?

7 A. I believe justice court was over with. I believe I
8 was over in the Circuit Clerk's office.

9 Q. Okay. Is the Circuit Clerk's office located in the
10 justice court building?

11 A. No, sir. It's located here in the courthouse.

12 Q. Okay. But you could have been in justice court; is
13 that correct?

14 A. We had had justice court that morning.

15 Q. Did you give a statement to John Johnson of the
16 District Attorney's Office?

17 A. Possibility, yes, sir.

18 BY MR. CARTER: May I approach the witness, Your
19 Honor?

20 BY THE COURT: Uh-hum.

21 BY MR. CARTER:

22 Q. Can you look at this and see if this statement
23 refreshes your memory in terms of where you were. Do you
24 recognize that document?

25 A. Yes, sir. It says I was in justice court, but I
26 believe it was over with.

27 Q. Okay. But you apparently said you were in justice
28 court; is that correct?

29 A. I may have. I don't know.

Bill Thornburg - CROSS - REDIRECT

1 Q. Now you left justice court, and you went to
2 Tardy's. How long were you at Tardy's? I realize you are
3 estimating, so do the best you can.

4 A. Probably 10 or 15 minutes.

5 Q. Okay. So do you know what time you left circuit
6 court or justice court or what time or whichever place you
7 were, do you know about what time you left?

8 A. I don't have any idea. I left in a hurry.

9 Q. Okay. Do you have any idea what time you got to
10 Angelica's?

11 A. No, sir.

12 Q. And I believe you told me earlier you thought you
13 might have been at Angelica's 15 or 20 minutes before Doyle
14 got there; is that correct?

15 A. Yes.

16 BY MR. CARTER: We tender. No further questions.

17 BY THE COURT: Anything else, Mr. Hill?

18 BY MR. HILL: Yes, sir. Just a couple of
19 questions.

20 REDIRECT EXAMINATION BY MR. HILL:

21 Q. Did you check in the office there at Angelica to
22 ascertain when Doyle Simpson checked out to go get the
23 lunches?

24 A. Yes, sir.

25 Q. What time was that?

26 A. 10:30.

27 Q. And Sheriff, when you went to Tardy Furniture
28 store, you weren't wearing Fila Grant Hill tennis shoes, were
29 you?

David Balash - DIRECT

1 A. No, sir.

2 BY MR. HILL: I think that's all I have, Your
3 Honor.

4 BY THE COURT: Is he finally excused?

5 BY MR. CARTER: Yes, sir.

6 BY MR. EVANS: Yes, sir.

7 BY THE COURT: Sheriff, you are finally excused.
8 You may step down. Who do you have next?

9 WITNESS EXCUSED

10 BY MR. HILL: Mr. David Balash, Your Honor.

11 DAVID E. BALASH,
12 a white male called to testify on behalf of the State of
13 Mississippi, having first been duly sworn, testified as
14 follows, to-wit:

15 BY MR. HILL: If the Court will indulge me one
16 minute, Your Honor, to arrange just a few exhibits; it
17 may save us some time.

18 BY THE COURT: State your name, please.

19 BY THE WITNESS: David E. Balash.

20 BY MR. HILL: May I proceed, Your Honor?

21 DIRECT EXAMINATION BY MR. HILL:

22 Q. Mr. Balash, would you tell us what you do for a
23 living, please, sir.

24 A. I'm an independent firearms examiner and forensic
25 science consultant.

26 Q. And would you share with us what your training and
27 experience is that qualifies you to be a firearms examiner?

28 A. My basic training and experience came when I joined
29 the Michigan State Police in 1966. I entered a recruit

David Balash - DIRECT

1 school. It was a 13 week school, participated in firearms
2 training in the recruit school, graduated, and was assigned
3 to the Niles post. I served five years as a road trooper
4 with the Michigan State Police. In January of 1972, I was
5 assigned to the forensic science division for training at the
6 Plymouth Laboratory in Plymouth, Michigan. I was assigned to
7 the firearms identification, tool mark, bombs and explosives
8 unit, and I worked at the Plymouth Laboratory, which later
9 relocated to the Northville Laboratory, as a firearms
10 examiner proceeding from the ranks of trooper through
11 sergeant and eventually to detective lieutenant in charge of
12 the firearms identification, tool mark, bombs and explosives
13 unit at that laboratory.

14 My training in the field of firearms identification
15 began again with basic firearms training skills at recruit
16 school. But specifically in firearms identification, when I
17 was assigned to Plymouth, I trained for the first 18 months
18 under the direction and supervision of a Mr. Earl C. Ledal,
19 who was then the head firearms examiner at that laboratory.

20 In the area of firearms identification, one becomes
21 an expert and qualified in the field by working really as an
22 apprentice. It's an on-the-job training skill. So you work
23 in that field under that supervision until they deem you
24 qualified to work in the field on your own.

25 I have also worked at the crime laboratories at the
26 City of Detroit, our East Lansing laboratory, and our Warren
27 laboratory, and for a period of time in 1990 through '91, I
28 believe, I was training a firearms examiner for the Oakland
29 County Sheriff's Department in Oakland, Michigan - Oakland

David Balash - DIRECT

County, Michigan.

I am a member of the Association of Firearms and Tool Mark Examiners, which is a national organization for people in the profession of firearms identification. I have toured various firearms manufacturing facilities along the east coast of the United States to obtain a more firsthand knowledge of the similarities and differences that these companies employ in the manufacture of their product. I have attended seminars and trainings throughout my 20 years in the state police and continued with observing the current trends in firearms through the 12 years since I have been retired. I retired from the state police after 25 years in 1992 as the senior firearms examiner for the State of Michigan.

Q. Mr. Balash, then I didn't do the math. I was listening to your experience and training. How many years have you had? How many years of experience have you had as a firearms examiner, certified firearms examiner?

A. I'm going into my 33rd year.

Q. Have you ever been qualified as an expert to testify as an expert in courts of law in this country?

A. Yes, I have.

Q. Can you tell us approximately how many times you have been qualified as an expert in your field?

A. I would estimate it's in excess of 350 occasions.

Q. And can you just give us some of the states that you have been qualified in, please?

A. Well, by far the vast majority would have been in Michigan, in and around the Detroit metropolitan area. I have also testified in circuit courts in Wisconsin, Illinois,

David Balash - DIRECT

1 Mississippi, and Ohio on prior occasions.

2 Q. Now because of your -- I'm sorry.

3 BY MR. HILL: I will now tender Mr. Balash, Your
4 Honor, as an expert in firearms identification.

5 BY MR. CARTER: No objection.

6 BY THE COURT: Did you say no objection?

7 BY MR. CARTER: No objection.

8 BY THE COURT: Okay. The Court accepts him as an
9 expert in that field.

10 BY MR. HILL:

11 Q. Mr. Balash, because of your recognized expertise in
12 the field, were you asked to look at some firearms evidence
13 in this particular case?

14 A. Yes, sir. I was.

15 Q. Did you travel to the crime lab in Jackson,
16 Mississippi, I believe sometime in 1998, if my memory serves
17 me correctly?

18 A. That is correct, sir.

19 Q. To look at evidence that was in the custody of the
20 Mississippi Crime Laboratory at that time?

21 A. That is correct, sir.

22 Q. Mr. Balash, I think first of all, I will hand you
23 five small pill boxes. They have been marked with our court
24 numbers - State's Exhibit 88, State's Exhibit 89, State's
25 Exhibit 90, State's Exhibit 91 and State's Exhibit 92. These
26 items have been received into evidence here in court, and I
27 would ask would you look at those to see if you can determine
28 whether or not those are the items or some of the items that
29 you have examined pursuant to your report?

David Balash - DIRECT

1 A. I recognize all these exhibits. Each of these pill
2 boxes have my laboratory number, the number I assigned to it,
3 621-98 and my initials DEB inscribed on the box. I do
4 recognize all these items of evidence, sir.

5 Q. If you don't mind, Mr. Balash, would you take them
6 one by one beginning with Exhibit number 88, I believe. Let
7 me refer -- yes, beginning with State's Exhibit number 88,
8 would you just take those and tell us what you found each
9 item of evidence to be, sir?

10 A. May I refer to my report, sir?

11 Q. Please do.

12 A. Thank you. (Pause) State's Exhibit 88 is a white
13 pill box, and on my report I have it indicated that it
14 contains a .380 auto caliber Omark Industries fired cartridge
15 case.

16 Q. Okay.

17 A. State's -- I'm sorry; did you want me to--

18 Q. You said your report indicated that was a .380 auto
19 caliber?

20 A. That is correct, sir.

21 Q. And before we proceed with the other casings, would
22 you just tell us, just give us a brief indication to the
23 ladies and gentlemen of the jury what a .380 auto caliber
24 weapon is, please, sir.

25 A. A .380 auto caliber is a somewhat small center
26 fired cartridge. It is, a European designation is a
27 9-millimeter short. It's essentially a shorter version of a
28 9 millimeter. It is a slightly larger diameter bullet and
29 it's less powerful than a 9 millimeter, and its configuration

David Balash - DIRECT

1 allows it to be in a fairly small weapon size. Therefore, it
2 is normally used as a concealable type weapon or a backup. A
3 lot of police officers carry that as weapons.

4 Q. Okay. Now I draw your attention again to State's
5 Exhibit number 89. Would you tell us what your examination
6 found that to be, please?

7 A. Again State's Exhibit 89 is a white pill box, and
8 when I examined it, that contained a .380 auto caliber
9 Remington Peters fired cartridge case.

10 Q. Okay, and would you proceed to do the same with
11 State's Exhibit 90, 91, and 92, please?

12 A. State's Exhibit 90, again a white pill box, and
13 that contained one .380 auto caliber Omark Industries fired
14 cartridge case. State's Exhibit 91, a white pill box, and
15 that contained one Omark Industries CCI fired cartridge case.
16 And State's Exhibit 92, a white pill box, and that contained
17 one .380 auto caliber Winchester fired cartridge case.

18 Q. Okay. So you had -- that Omark industries, what
19 was the designation on the head stamp for the Omark
20 Industries casing?

21 A. Well, it's an aluminum cartridge case, and it has
22 CCI. And on either side of the primer it has an "N" on one
23 side and an "R" on the other side. And what that indicates,
24 it's a non-reloadable cartridge. Most center fired
25 cartridges in the United States like fire are single hulled,
26 and they are made to be reloaded. So the primer cup has an
27 anvil contained in the primer. On these non-reloadable ones,
28 it has two little flash hulls. It's a European type
29 cartridge. It's less expensive to manufacture, and this

David Balash - DIRECT

1 cartridge was designed not to be reloaded. It was a one time
2 use only item.

3 Q. Now of those five cartridge casings that you have
4 before you, how many are the CCI manufactured brand?

5 A. I believe three, sir. Three.

6 Q. Three of them. And I think you indicated that
7 there were two other cartridge casings of a different
8 manufacturer's brand; is that correct?

9 A. Yes, sir. One Remington and one Winchester.

10 Q. Okay. After -- and you have indicated, I don't
11 know if I have asked you the question. Did you examine each
12 one of those casings, cartridge casings microscopically?

13 A. I did.

14 Q. Would you just give us a little bit of detail about
15 what your examinations consisted of, Mr. Balash?

16 A. Normally when one examines a fired cartridge case,
17 you would have a weapon to examine it with, and the process
18 would be to test fire the weapon, collect the fired bullets
19 and the fired cartridge cases and mark them as test. And
20 then by utilizing the comparison microscope, I know that
21 these cartridge cases and fired bullets came from that gun.
22 So those are my tests and my known standard. Now I pick up
23 the suspect or evidence items, and I begin to look at them
24 under the comparison microscope to see whether they agree or
25 don't agree with what I'm seeing from the test.

26 In this particular case there was no suspect
27 firearm submitted. So what I did was look at one cartridge
28 case to see what its characteristics were, and then I used
29 that as my test, and I compared the other four against it.

David Balash - DIRECT

1 And it was my opinion that all five of these fired cartridge
2 cases were fired in the same weapon.

3 Q. Okay. The markings that you examined under the
4 comparison microscope, were those what we in the lay field
5 commonly call extractor markings or something like that, or
6 could you tell us a little bit about that?

7 A. There are a number of markings on fired cartridge
8 cases. Extractor markings are one of them. Extractor
9 markings though only mean the cartridge case was in the gun.
10 It doesn't mean the cartridge was fired in the gun. So you
11 can actually put a cartridge in the gun and run it through
12 the mechanism, and it will have an extractor and an ejector
13 mark. But it doesn't mean it was fired in that gun.

14 To identify it as having been fired in the same
15 gun, you have to either have breech, firing pin, or chamber
16 marks. And that's what I looked for in this case to identify
17 all these together. Chamber marks are the marks that are on
18 the side of the cartridge case. And when the cartridge is
19 fired, gases expand the cartridge against the breech of the
20 weapon, and in a semi-auto pistol, which most .380's are,
21 during the extraction process under pressure, it will
22 actually leave striated markings sometimes along the side.
23 These are called chamber markings. The firing pin itself
24 will strike the soft primer cup, and there can be marks on
25 the firing pin that can be distinctive and identifiable. And
26 then the breech marks that some people call breech face
27 marks, they are the soft primer cup or sometimes even the
28 harder aluminum and/or brass that the cartridges are made of;
29 in the firing process that will slam back against the breech.

David Balash - DIRECT

1 And it will actually pick up a negative impression of it, and
2 those are the identifying marks that the cartridge cases were
3 fired in a specific weapon. So it's chamber, firing pin, and
4 breech marks that I would look at for the identification.

5 Q. And having made all of those examinations, were you
6 able to form an opinion to a reasonable degree of scientific
7 certainty as to the identification or match as to whether or
8 not those casings that you have before you were fired in the
9 same weapon or pistol?

10 A. I did.

11 Q. And what was that finding, sir?

12 A. It was my opinion that these cartridges were fired
13 in the same weapon.

14 Q. And is that, is that a positive finding? I mean is
15 it positive identification?

16 A. It is. When I identify it, that means that I am
17 100 percent certain that these were fired in one gun and no
18 other gun on the face of the earth. And I won't say positive
19 unless that's my opinion.

20 Q. I'm sorry. I didn't hear you?

21 A. I will not say positive unless I am 100 percent
22 convinced.

23 Q. You also looked at some other items of evidence, I
24 believe, sir?

25 A. I did.

26 Q. I would now like to show to you State's Exhibit 81
27 and 82, and just have you examine those for a moment, Mr.
28 Balash. I will remove those for you.

29 A. Thank you, sir. State's Exhibit 81 is a manilla

David Balash - DIRECT

1 envelope. It has my initials and my lab number on the back.
2 And this contains a .380 auto caliber full metal jacketed
3 fired bullet that I examined.

4 Q. Now that just for the record, that exhibit that you
5 have just alluded to, State's Exhibit 81, this is in what
6 color of an envelope, sir?

7 A. Manilla.

8 Q. All right, sir. Would you then tell us whether or
9 not you recognize State's Exhibit 82?

10 A. State's Exhibit 82 is a white envelope. It again
11 has my lab number and my initials on the back of it. And in
12 this one it contained one .380 auto caliber full metal jacket
13 fired bullet. I looked at this item as well.

14 Q. I will now hand you what has been marked for
15 identification as State's Exhibit number 80, and I would ask
16 you to examine that item of evidence, sir.

17 A. State's Exhibit number 80 is a white pill box. It
18 again, it has my laboratory number and initials on it, and it
19 has the identification of recovered from mattress, Tardy
20 Furniture Company. And I have it as an examined item on my
21 report.

22 Q. And did you refer to it in your report as, I think
23 on the back page, as the bullet that was recovered from the
24 mattress?

25 A. Yes, sir. I did.

26 Q. At Tardy Furniture?

27 A. That is correct, sir.

28 Q. Mr. Balash, I would next hand to you what has been
29 marked State's Exhibit number 86 for identification and ask

David Balash - DIRECT

1 you if you would look at that, please, sir?

2 A. State's Exhibit 86 is a clear plastic bag. It is
3 identified on my report as containing a plastic tube which
4 contained two copper jackets, slash lead fragment components
5 with a quantity of paper and fragments of copper and lead.
6 The container has my initials on the outside of it. I do
7 recognize this item, sir.

8 Q. Okay. I will next hand you State's Exhibit number
9 84. I would ask you, sir, if you would look at that item and
10 see if you recognize it. And if you would, if you do
11 recognize it, would you describe for us, please, what that
12 is?

13 A. State's Exhibit 84 is a white pill box. It has my
14 lab number and the initials on the outside of it. And it is
15 a pill box that contains a .380 auto caliber total metal
16 jacket fired bullet. This bullet has severe ricochet damage
17 to approximately half of its surface is the designation that
18 I have in my report for this bullet.

19 Q. All right, sir. Now did you notice ricochet damage
20 to any other projectile that you found?

21 A. Yes.

22 Q. Would you tell us which one that was.

23 A. It was S-80, the bullet reportedly taken from the
24 mattress. This bullet also displays ricochet damage.

25 Q. Now did you examine those bullets or bullet
26 fragments that are in those exhibits that you have just
27 identified?

28 A. I did.

29 Q. Will you tell us what you found each one of them to

David Balash - DIRECT

1 be, and that may be what you read to us just a minute ago.

2 But let's just start if we may with the mattress bullet.

3 That is State's Exhibit number 80. If you would look at that
4 one and tell us what you found that to be?

5 A. State's Exhibit number 80 again is a white pill box
6 containing a .380 auto caliber full metal jacketed bullet
7 with ricochet damage. State's Exhibit--

8 Q. 81.

9 A. 81 is a manilla coin envelope which contained one
10 .380 auto caliber full metal jacketed fired bullet.

11 Q. 82, please?

12 A. State's Exhibit 82 is a white envelope which
13 contains one .380 auto caliber full metal jacketed fired
14 bullet. And State's Exhibit 86 is one clear plastic bag
15 containing a plastic tube containing two copper jacket lead
16 fragments, a quantity of paper, and fragments of copper and
17 lead, and that's what this one contains.

18 Q. Let me stop right there. That is Exhibit number
19 86. Exhibit number 86 has been received into evidence and
20 testified to that these were fragments removed from the head
21 and/or brain of Ms. Carmen Rigby. Were you able to determine
22 from your examination any class characteristics or rifling
23 specifications on that particular exhibit right there?

24 A. Yes, sir. I was.

25 Q. Would you state those to us, please?

26 A. The rifling specifications and characteristics,
27 this was a portion of a .380 auto caliber fired bullet. I
28 could not tell whether it was a total metal jacket or a full
29 metal jacket, and the difference between the total metal

David Balash - DIRECT

1 jacket is that the entire bullet is encased in copper. There
2 is no exposed lead. A full metal jacketed bullet means the
3 nose and everything to the front is encased in all copper,
4 but the base is exposed lead. That is the difference between
5 those two terms. I could not tell whether that was a full
6 metal jacket or a total metal jacket, but it had six lands
7 and grooves with a right rifling characteristics, and it was
8 consistent with a .380 auto caliber fired bullet, portion of
9 a fired bullet.

10 Q. State's Exhibit number 84, I believe you have that
11 up there. Is that correct?

12 A. Yes, I do.

13 Q. That has been received into evidence as a bullet
14 recovered near the love seat, near or under rather a love
15 seat in Tardy Furniture store on July 16, 1996. Were you
16 able to determine from your examination of that projectile or
17 bullet any class characteristics and/or rifling
18 specifications?

19 A. I was. This was also a .380 auto caliber total
20 metal jacketed fired bullet. It displayed severe ricochet
21 damage to approximately half of its surface, and I also made
22 the note that it had struck a hard, flat, smooth surface at
23 approximately a 45-degree angle to cause this damage. And it
24 had six lands and grooves with a right twist rifling.

25 Q. Briefly, Mr. Balash, would you just describe for us
26 what your examinations of these five items of evidence
27 consisted of?

28 A. Again, not having a firearm to work with as a test
29 exemplar, so I had no ability to fire a test shot and obtain

David Balash - DIRECT

1 fired bullets and fired cartridge cases, I began looking at
2 these to find a good undamaged specimen. And I picked one of
3 the fired bullets that had the least amount of damage and
4 looked at it as far as its land and grooves and rifling went,
5 and proceeded to begin to use that as my standard or my test
6 shot. Then I compared all the other firearms evidence from
7 fired bullets on this case against that, and I began that
8 through the whole process of all the firearms evidence that
9 consisted of fired bullets on this case. That's how I worked
10 it.

11 Q. And your examination made use of a comparison
12 microscope?

13 A. That is correct. To identify fired bullets, you
14 have to have a comparison microscope. A comparison
15 microscope allows you to view two different stages
16 simultaneously, and you can literally juxtapose two
17 projectiles at one time and blend them into a single unit.
18 And then you can rotate them on their axis to allow you to
19 view two bullets as they come together, and they would look
20 under the scope as one bullet.

21 Q. With regard to the exhibits that you have just
22 talked about; that is, State's Exhibit number 80 -- I'm
23 sorry, let me repeat that. With regard to State's Exhibit
24 number 80, the bullet recovered from the mattress; State's
25 Exhibit number 81, one of the, I think they are referred to
26 as from the Simpson post, the one in the manilla envelope;
27 with regard to Exhibit number 82 from the Simpson post in the
28 white envelope; with regard to State's Exhibit number 84,
29 which we have called the love seat bullet; and with regard to

David Balash - DIRECT

1 State's Exhibit number 86 recovered from Ms. Rigby by
2 Dr. Hayne, were you able to form an opinion to a reasonable
3 degree of scientific certainty as to a match or
4 identification of those projectiles or fragments, and/or
5 fragments?

6 A. I was.

7 Q. Would you state that opinion, please?

8 A. My opinion was that State's Exhibit 80, 81, 82, 84,
9 and 86 were all fired from the same gun.

10 Q. And what is the degree of certainty that you have
11 to a reasonable degree of scientific certainty, what is that
12 degree of certainty that you would announce that allows you
13 to state your opinion?

14 A. I have to be 100 percent convinced. There can be
15 no possibility in my mind whatsoever that they were not fired
16 from any other weapon. Otherwise, I would not state the
17 results as I did.

18 Q. Thank you, sir. I think Mr. Balash, you -- I will
19 remove those from out of in front of you if you don't mind,
20 sir. I think you have also examined some other exhibits; is
21 that correct?

22 A. Yes, I have.

23 BY MR. HILL: At this time, Your Honor, before I
24 proceed further, I need to -- I don't think this has
25 yet been done. I would offer State's Exhibit number
26 80, which is the projectile that Mr. Balash has just
27 testified to. I would offer that into evidence.

28 BY MR. CARTER: No objection.

29 BY THE COURT: Let it admitted.

David Balash - DIRECT

1 (SMALL WHITE BOX CONTAINING PROJECTILE FROM
2 MATTRESS PREVIOUSLY MARKED AS STATE'S EXHIBIT S-80 FOR
3 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

4 BY MR. HILL:

5 Q. Mr. Balash, I would next present to you State's
6 Exhibit 93, sir. Would you look at that and see if you
7 recognize it?

8 A. State's Exhibit 93 is a white pill box. It has my
9 number and initials on it. And according to this, my report
10 is a .380 auto caliber Omark Industries CCI cartridge, and
11 this cartridge has damage to the nose.

12 Q. Now that, when you say cartridge, would it be an
13 apt description in different terms to call that a live round
14 or an unfired bullet?

15 A. That is correct, sir.

16 Q. And you said that it had damage to the nose; that
17 is, the point of the bullet?

18 A. That is correct, sir.

19 Q. Do you have any opinion as to what that is
20 indicative of, or could you tell from your examination what
21 the cause of that damage was?

22 A. I had an opinion on that, yes.

23 Q. Would you state that, please?

24 A. It is my opinion this was a jammed cartridge and
25 was cleared from a firearms mechanism. The damage to the
26 nose indicated it had been jammed and cleared and simply fell
27 out of the weapon.

28 BY MR. HILL: If the Court will indulge me one
29 minute, please, Your Honor.

David Balash - DIRECT

BY MR. HILL:

Q. I'm going to show you a couple more exhibits, Mr. Balash. State's Exhibits number 83 and 85, would you look at those for me, please.

A. State's Exhibit 83 is a white pill box. It bears my lab number and my initials. Contained within that is a .380 auto caliber total metal jacket fired bullet indicating this bullet has severe damage to approximately one half of its surface. And State's Exhibit 85, a white pill box, also with my laboratory number and initials on it; this one reportedly has a fragment of a total metal jacket or full metal jacket fired bullet.

Q. Would you please look at and examine State's Exhibit number 87. Tell us what that, if you recognize it, and what it appears to be?

A. State's Exhibit 87 is a clear plastic bag. It has my initials on the outside of the bag. Contained within that is a portion of a total or a plastic tube containing a portion of a total metal jacket or a full metal jacketed bullet, a quantity of fragments and copper. I do recognize this item, sir.

Q. All right, sir. Mr. Balash, did you examine those?

A. I did, sir.

Q. And did you have an opinion, were you able to form any opinion about those as to match or identification?

A. I was.

Q. Would you tell us what that was, please?

A. It is my opinion these are consistent with portions of or .380 auto caliber fired bullets. They display class

David Balash - DIRECT

1 rifling specifications, six lands and grooves with a right
2 twist. However, the damage was severe enough that I was not
3 able to identify them with the other fired bullets and
4 fragments of the bullets on this case. They were consistent
5 with, but I would neither identify nor eliminate these as
6 coming from the same source.

7 Q. And I would like to focus just on a part of that
8 response, the part that says you would not offer an opinion
9 that would eliminate them. And my question is did you see
10 anything in your examination of those that would contra-
11 indicate or make you to or cause you to have an opinion that
12 they were not fired in the same gun as the other exhibits
13 that you have testified, fired from the same weapon as the
14 other exhibits that you have testified about?

15 A. No, sir. Had I, I would have indicated that in the
16 report.

17 Q. Did you have an opinion to a reasonable degree of
18 scientific certainty about all of the bullets and the bullet
19 fragments that you examined? That would be the five that we
20 talked about earlier plus the three that you now have before
21 you. Did you have an opinion to a reasonable degree of
22 scientific certainty about whether or not all of those were
23 consistent with a .380 auto caliber item of bullet? I'm
24 sorry. That may have been a somewhat awkward question. Did
25 you understand what I was asking?

26 A. I do, sir.

27 Q. Would you--

28 A. -- All the bullets and bullet fragments that I
29 observed on this case are consistent with a .380 auto caliber

David Balash - DIRECT

bullet.

Q. And did they, did they all have the same class characteristics or rifling specifications?

A. All the bullets and fragments of bullets that I examined had the same class rifling specifications.

BY MR. HILL: Court indulge me one minute, Your Honor, please.

(State's Counsel confer.)

BY MR. HILL:

Q. I just have just a couple more questions. Mr. Balash, I believe you have indicated that you have looked at the bullet from the mattress in Tardy Furniture, and you have looked at the two bullets that came from the post, and you have looked at a bullet that came from under or near the love seat and the bullet fragments in Exhibit number 86 that were taken from Ms. Rigby; do you, is it -- tell us what your opinion is as to whether all of these were fired in the same weapon, fired from the same weapon?

A. In my opinion, all of those bullets and/or bullet fragments were fired from the same weapon.

Q. To a 100 percent certainty on your part?

A. That is correct, sir.

BY MR. HILL: That's all we have of the witness, Your Honor.

(Mr. Carter approaches the bench.)

BY MR. CARTER: Your Honor, could we take a break?

BY THE COURT: Okay. We are going to take a short break at this time. We will start back.

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(FOLLOWING THE MORNING RECESS ON FEBRUARY 7, 2004,
TESTIMONY OF DAVID BALASH CONTINUED IN OPEN COURT WITH ALL
COUNSEL, THE DEFENDANT, AND THE JURY PRESENT:)

BY THE COURT: Mr. Carter.

CROSS-EXAMINATION BY MR. CARTER:

Q. How are you doing, Mr. Balash? I am Ray Carter.

A. Glad to meet you, sir.

Q. Mr. Balash, I just want to make sure that the jury
understands and is not confused here. You don't have any
idea whether Curtis Flowers went in Tardy's, do you?

A. No, sir. I do not.

Q. And your testing, your job duties as far as you are
concerned, wasn't meant to say who went in Tardy's or who
didn't go in; is that correct?

A. No, mine deals only with what I testified to, sir.

Q. Mr. Balash, have you ever done any work with
respect to, expert work with respect to gunshot residue?

A. Yes, sir. I have.

Q. Have you ever testified in court?

A. Yes, sir. I have.

Q. About how many times, if you recollect?

A. I would say it would be above 20, somewhere in that
area. I don't recall specifically.

Q. Can you give the Court some kind of idea what you
have done with respect to gunshot residue tests?

A. There are two types of residue for firearms
identification. One is a distance determining residue test
where a weapon is fired against the target, and you can
determine muzzle distance to the target depending on what the

David Balash - CROSS

1 dispersal pattern of the gunpowder is. The second test that
2 is done is a test using the primer residues from center fired
3 cartridges. And the primer residue test is done most notably
4 these days by using a scanning electron microscope. What
5 they are looking for are particles that come from the primer
6 compounds of center fired cartridges. And in the primer
7 compounds you have barium, antimony, and some lead
8 compositions. So when a center fire cartridge is fired,
9 small amounts of these can be formed, and in the heating and
10 pressure of firing a weapon, small spheres of a combined
11 barium, antimony are formed, and it's the only place that you
12 find this is in the firing of a weapon. So if you find these
13 particles, it's also indicative.

14 So one is for distance muzzle to target. The other
15 one is to find out if you have gunpowder residue on the
16 person, the hands or the clothing.

17 BY MR. CARTER: Your Honor, we offer Mr. Balash
18 as an expert in gunshot residue analysis.

19 BY THE COURT: Do what? I'm sorry.

20 BY MR. CARTER: We offer Mr. Balash as an expert
21 in the area of gunshot residue analysis.

22 BY MR. EVANS: He has already been qualified as
23 an expert in firearms examination. I think that is
24 part of it.

25 BY THE COURT: Well, we will do it specific.

26 BY MR. CARTER: Maybe it's not necessary.

27 BY THE COURT: He could tell me. That may be a
28 different field. I will accept him as an expert in
29 that field.

David Balash - CROSS

1 **BY THE WITNESS:** Thank you, Your Honor.

2 BY MR. CARTER:

3 Q. Mr. Balash, to your knowledge is there any way to
4 tell absolutely whether an individual has fired a gun?

5 A. No, sir. There is not.

6 Q. Could you tell the jury some of the ways that you
7 can get gunshot residue on your hand?

8 A. Which residue are you speaking of, sir?

9 Q. Gunshot residue. I'm talking about in terms of
10 generalities right now. Let me make sure I understand what
11 your question. Now when you say -- could you ask that
12 question again?

13 **BY THE COURT:** Well, let's get it where you are
14 asking him questions.

15 **BY MR. CARTER:** Well, that's what I want to, but
16 I want to respond to what he--

17 **BY MR. HILL:** May it please the Court, Your
18 Honor, I would object to the question as asked because
19 I believe it calls for speculation. I do not object
20 to the witness testifying in the area, but I think the
21 question that has been asked of him calls for undue
22 speculation.

23 **BY THE COURT:** Well, I'm going to let him ask the
24 question again. I'm not sure what he asked.

25 **BY MR. CARTER:** I will restate it.

26 BY MR. CARTER:

27 Q. Is it a fact that you can get gunshot residue on
28 your hand or hands from firing a weapon?

29 A. That is correct, sir.

David Balash - CROSS

1 Q. How does that come about? Could you explain the
2 process if that happens?

3 A. The gunshot residue Counsel is speaking of is
4 normally the primer residue which was the second descriptive
5 one that I was speaking of. The best way to envision that is
6 first, when you are looking at the gunpowder distance
7 determination, those are particles or grains of gunpowder.
8 They are about somewhere the size of a grain of sand, but you
9 can see these. The gunpowder residue from the primer is in a
10 smoke or vapor.

11 The best way to visualize that for you would be
12 when somebody exhales a cigarette smoke, that is the type of
13 vapor that is coming that you are looking for. The material
14 that is there is microscopic in size. It's approximately 1
15 micron in diameter. A micron is 1 millionth of a meter. So
16 in a distance of about this high, you would have 10,000
17 microns stacked one on top of the other. It's a very small
18 particle.

19 When you fire a gun, depending on the type of gun;
20 if it's a revolver, you have particles that will come out of
21 the muzzle. You have particles that come out of the cylinder
22 gap between the chamber and the back of the barrel. And you
23 also have particles that will come from the breech area where
24 the center fire cartridge is. On a rifle or a semi-automatic
25 pistol, it is more of enclosed. The chamber area is an
26 integral part of the barrel. So there is no escaping in that
27 area. 99 plus percent of all the material comes out of the
28 butt and the muzzle of the firearm. A very small amount
29 might come out, especially in a semi-automatic, during the

David Balash - CROSS

1 extraction and ejection process. But it's a smoke-like
2 material, and it's the smoke that might come back and deposit
3 on the back of the hands. The only way one would get
4 gunpowder residue of a particulate matter from the gunpowder
5 itself where if you were in front of the muzzle of the
6 firearm or if you were on the side of a revolver, because it
7 comes out under pressure on the side.

8 But what Counsel is referring on the hand, that is
9 more of the primer compound, and in the firing process, it
10 would come back that way.

11 Q. Correct me if I'm wrong. Now the primer compound,
12 that is composed of barium, antimony, and lead?

13 A. That is a primer, that is what they are looking for
14 in the compound. That is correct, sir.

15 Q. And if I'm reading correctly, you are saying that
16 in some instances you can actually see the gunshot -- I guess
17 if it's sufficient, you can see it on the hand, but in some
18 instances when it's not sufficient, you can't see it, and you
19 have to look at it through a microscope?

20 A. I might not have been clear enough on that. You
21 cannot see the primer residue compound. It's the one that is
22 1 micron in size. The residue that you can see, the grains
23 of sand size are the gunpowder residue. This is primer
24 residue, and that you would need a microscope to see it. And
25 it's so small you need a scanning electron microscope to even
26 identify it. It's a very -- I don't have a scanning electron
27 microscope nor do I do the exam for it. But the process is
28 very familiar to me. I have seen it over the years.

29 Q. Now you can get primer residue on your hand from, I

David Balash - CROSS

1 think we already established firing a weapon. You can get it
2 from touching a weapon after it has been fired; is that
3 correct?

4 A. That is correct, sir.

5 Q. You can get it from touching a, say a table or an
6 object that has that on it?

7 A. If the compound is present and you handle something
8 or come into contact with it, you can have it deposited on
9 your hands as well.

10 Q. Can you get it from shaking hands with somebody
11 that has it on their hand?

12 A. If they have it on their hand. It can be a
13 transfer. That is correct, sir.

14 Q. Can you get it on your hand from say a pen, an ink
15 pen if an ink pen has it on there somehow?

16 A. Whatever object that has it on it, it's a
17 transferable material. You can transfer it.

18 Q. One moment. Could you tell the jury what tests are
19 available to actually discern, discover or detect gunshot
20 residue?

21 A. There used to be three tests available, one for the
22 primer residue compound. We are only talking about the
23 primer residue compound. There used to be three tests
24 available. First, there was the neutron activation analysis
25 when you need an atomic reactor for that. And then you would
26 have atomic absorption. Those two tests used to be provided
27 by different laboratories. They are no longer to my
28 knowledge being utilized by any police departments. The only
29 one that I'm aware of currently that is being utilized is the

David Balash - CROSS

1 scanning electron microscope testing in looking for these
2 particles. And actually very few police departments have the
3 capability of doing that. For example, the Michigan State
4 Police never did have the capability, nor did they ever do
5 the test. They had to send it to the ATF Laboratories to do
6 that test. Now to my information, they don't do that. You
7 have to go to a private laboratory, or some departments still
8 do that. I know for a fact the Detroit Police Department
9 does a scanning electron microscope, but that is the only
10 real test that I know of these days that people utilize for
11 gunpowder primer residue compounds.

12 Q. Now could you explain to the jury the process of,
13 for lack of knowing the correct term, the process of getting
14 the primer residue off of a person's hand in order to submit
15 to the lab.

16 A. Well, originally what they would do and I made up a
17 number, hundreds of these kits. They would use a Q-tip, and
18 they would use a Q-tip that had a plastic stem as opposed to
19 a wooden stem because there is some barium in wood, so it
20 wouldn't leach out to it. So they used a plastic stem, and
21 you would use a 5 percent dilute solution of nitric acid, and
22 you would swab the hands. You would swab the back of the
23 hand, and then you would swab the web area of the hand, swab
24 the palms, or any other area you chose to. Now one of the
25 problems is what area is the web? Is this the web of the
26 hand, just a small area? Some people would include this area
27 of the web, and some people would include the palm area of
28 the web. So it's really what the person collecting it
29 decides that's the web, or that's the palm, or that's the

David Balash - CROSS

1 back of the hand. That test -- and then you would put that
2 in a small individual test tube. And if you had a cartridge
3 case, you would swab the inside of that for a known standard
4 and send that off to be examined. That was with the neutron
5 activation analysis or atomic absorption.

6 Now for the scanning electron microscope, the
7 current collection method is called a stemp. What it is,
8 it's a small aluminum-like tab, and for lack of a better one,
9 has double sided sticky tape to it. And what the examiner
10 does is stamps the back of the hand or the web area of the
11 hand and puts that in the container; takes another one, does
12 the palm of the hand. It has become in Detroit, I know, for
13 example, they will do the forehead of an individual. They
14 will do the shirt sleeve of an individual that they suspect
15 that may have fired a weapon. Then they will send that, and
16 in the scanning electron microscope, they are looking for
17 certain compounds. And the definitive compounds are a
18 combination of barium, antimony and lead in a spherical shape
19 where barium, antimony in a spherical shape. Those are the
20 only two compounds that will allow them to say positively
21 this came from the firing of a weapon and from no other
22 source.

23 It means that you either handled a weapon, were in
24 the presence of when a weapon was fired, or you fired a
25 weapon. It does not definitively say you did or did not fire
26 a weapon.

27 Q. Okay, is it correct that high levels of barium and
28 antimony on a suspect's hand is a strong indication that a
29 person fired or handled a gun that was fired?

David Balash - CROSS

1 A. It's a strong indication, but it can also be a
2 strong indication that a person was in the vicinity when a
3 gun was fired. If I'm standing next to a person when a gun
4 is fired, I may have tremendous amounts of that present on
5 me, but I wasn't the one that fired the gun. But I'm going
6 to have a lot of that on my hands or the side of me as well.
7 So it's a strong indication you were in the presence where a
8 gun was fired or you fired a gun.

9 Q. So is it also true or not true that if very low
10 levels of antimony and barium or an invisible amount,
11 invisible with respect to the eye, of barium and antimony is
12 found that that is a weak indication that a person has fired
13 a weapon?

14 A. The best way that I can answer that question is if
15 an individual had 100 parts of the unique particle on his
16 hand, I would not testify that that person fired a weapon.
17 There is no way that I would infer that from that. So the
18 less amount you would get -- when you get to a very low
19 amount, I would never make an inference that somebody fired a
20 weapon from one or two particles.

21 Q. One moment. Correct me if I'm wrong; if I'm
22 reading what you said correctly, so if you found one
23 particle, what would be your opinion?

24 A. The same as if I found a hundred. I would not form
25 an opinion that a person fired or didn't fire a weapon based
26 on that test.

27 BY MR. CARTER: One moment, Your Honor.

28 (Defense Counsel confer.)

29 BY MR. CARTER: No further questions.

David Balash - REDIRECT

1 REDIRECT EXAMINATION BY MR. HILL:

2 Q. Mr. Balash, I would like to ask you just a few
3 questions about, I think you called it primer residue. I
4 think I understood you to say that it was definitive for;
5 that is, the finding of a spherical particle of barium and
6 antimony somewhat fused together is definitive for having
7 come from a fired center fire cartridge. Is that correct?

8 Did I--

9 A. Yes, you did. That is correct, sir.

10 Q. That is correct. Does that mean then that you
11 don't know of any other source for having a particle or for
12 the, in the natural surroundings finding a spherical particle
13 kind of compressed together, I guess, of barium and antimony
14 other than from the firing of a bullet, a cartridge?

15 A. To the best of my knowledge, that is the only place
16 that it is found is in the firing process of discharging a
17 weapon.

18 Q. Now what is it about the finding of that barium and
19 antimony, those two elements in combination fused into a
20 spherical particle, what is it about that that leads us or
21 leads you as the expert to the conclusion that it only comes
22 from the firing of a weapon?

23 A. Barium and antimony are not all that prevalent,
24 although they are, you know, available. But they have been
25 fused in a spherical form, and it is not found in nature in
26 any other method. And it needs the pressure of the
27 combustion under pressure to form that sphere. And up until
28 this time, there has been no other method found that produces
29 that spherical shape.

David Balash - REDIRECT

1 Q. And I think you indicated that in the firing of a
2 what we call a semi-automatic weapon, I believe you answered
3 Defense Counsel on this; that on a semi-automatic weapon,
4 most of the gunshot residue comes out the muzzle of the
5 weapon?

6 A. In my opinion that is correct, sir.

7 Q. But you also indicated, I believe, that some - and
8 I am asking this as a question - could some primer residue
9 come out of the ejection port when the weapon is fired and
10 the ejection port opens to eject the empty cartridge case out
11 of the weapon?

12 A. Correct.

13 Q. You indicated that some primer residue would be
14 expected to come out at that time?

15 A. That is correct, sir.

16 Q. And if a person is holding a weapon in his hand and
17 that gun is fired or that weapon is fired, and the ejection
18 port would be in relatively close proximity to the top of the
19 web and the back of the hand; is that correct?

20 A. Correct.

21 Q. If that scenario took place and someone used his
22 right hand to fire a semi-automatic weapon in a normal firing
23 position, would you then expect to find a small amount of
24 primer residue on the back of his hand?

25 A. You could but -- and I don't mean to
26 mischaracterize my testimony or what you are trying to elicit
27 from me. When I said the majority of the firearm's discharge
28 residue came out of the muzzle, I didn't want you to infer
29 from that statement that it, because it came out of the

David Balash - REDIRECT

1 muzzle, it could not get back on the hand. You remember the
2 cloud shape that I said would, the smoke. It will actually
3 roll around, and I have seen it in videos and whatnot where
4 actually the smoke, even though it came out of the muzzle of
5 the firearm, will actually come back and engulf the entire
6 hand up to the middle of the forearm. So it isn't by
7 necessity that it would have to come out of the bridge or
8 ejection area of a weapon for it to be deposited on a hand.
9 I didn't mean to mislead in that regard. I apologize if I
10 did.

11 Q. No, sir. I didn't take you to mean that. But I
12 think my question was would it be expected that you would
13 have, if a person fired a gun, a semi-automatic weapon as you
14 have described, it certainly wouldn't be unusual for there to
15 be particles of primer residue on the back of the hand, would
16 it?

17 A. When you are looking at these particle residues,
18 they are easily removed. So the mere fact that I would take
19 a gun and I would fire six consecutive shots, and I would get
20 a volume of material on my hands. By simply putting my hand
21 in my pocket and removing it, I would remove a vast majority
22 of these. The tests won't even be conducted unless you
23 generally get the sample taken within a four hour time frame.
24 So anything you do to the hands can eliminate whatever
25 residue may or may not be on the hands. Even back when they
26 were doing it on the neutron activation analysis, they
27 wouldn't even accept the test if it was taken from the hands
28 after a four hour time lapse. So if you went to the bathroom
29 and washed your hands, for example, there was a distinct

David Balash - REDIRECT

1 possibility you could remove everything of that nature. It's
2 not material that sticks like glue. It is easily removable
3 in the normal processes that we as humans go through in
4 handling things and moving our hands. You can remove that
5 material.

6 So you may have hundreds of them available if I
7 fired a weapon, and if I don't do anything in the next hour
8 or two, by simply moving around, probably 90 or 95 percent of
9 whatever was there will already have been removed by the fact
10 that I am just acting in a normal fashion in using my hands.

11 BY MR. HILL: Your Honor, I have no further
12 questions from Mr. Balash.

13 BY THE COURT: Is he finally excused?

14 BY MR. CARTER: Yes.

15 BY MR. EVANS: Yes, sir.

16 BY THE COURT: All right, sir.

17 BY THE WITNESS: I am excused, Your Honor?

18 BY THE COURT: Yes, sir. You are free to go.

19 BY THE WITNESS: Thank you very much.

20 WITNESS EXCUSED.

21 BY THE COURT: Who will you have next?

22 BY MR. EVANS: Katherine Snow.

23 BY THE COURT: Has she been sworn?

24 BY MR. EVANS: No, sir. She wasn't here at that
25 time.

26 KATHERINE SNOW,

27 a black female called to testify as a witness by the State of
28 Mississippi, having first been duly sworn, testified as
29 follows, to-wit:

Katherine Snow - DIRECT

1 **BY THE COURT:** Ms. Snow, if you would have a seat
2 right here. State your name, please.

3 **BY THE WITNESS:** Katherine Snow.

4 **BY MR. EVANS:** Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. EVANS:

6 Q. Good morning, Ms. Snow.

7 A. Good morning.

8 Q. Ms. Snow, I want to direct your attention back to
9 July the 16th of 1996. Do you remember that morning?

10 A. Yes.

11 Q. Can you tell the ladies and gentlemen of the jury
12 where you were working that morning?

13 A. Angelica.

14 Q. And what is Angelica?

15 A. It's a sewing factory.

16 Q. Is it still open now?

17 A. It's closed.

18 Q. It's closed now?

19 A. It's closed.

20 Q. What hours were you working at Angelica on July the
21 16th, 1996?

22 A. From 7:00 to 3:30.

23 Q. Is that 7:00 in the morning until 3:30 in the
24 evening?

25 A. Yes, it is.

26 Q. Did you go to work that day?

27 A. I did.

28 Q. Can you describe for the ladies and gentlemen of
29 the jury what happened when you got to work.

Katherine Snow - DIRECT

1 A. Well-

2 Q. -- Were you on time?

3 A. I was late.

4 Q. Okay. Tell us what happened.

5 A. I was late, and I parked my car on the far end, and
6 where I parked my car, it wasn't a parking spot. The trucks
7 are coming around from behind the building, and so about -- I
8 went inside the plant and clocked in. I sewed the few
9 materials that I had, and about 7:15 I asked my supervisor
10 could I go outside and move my car so it won't get hit. So
11 when I went outside to move my car, when I opened the door,
12 that's when I seen this guy leaning up against Doyle
13 Simpson's car on the front end. Then I spoke and I went on
14 to move my car. Then I come back down, and he wasn't there,
15 and I went back in the plant.

16 Q. All right, who is Doyle Simpson?

17 A. Doyle Simpson is one of the coworkers there.

18 Q. And how long have you known Doyle?

19 A. Ever since I have been working at -- well, yeah,
20 ever since I been working at Angelica's.

21 Q. Okay, so at about 7:15 you went outside to move
22 your vehicle?

23 A. I did.

24 Q. And you saw a person leaning up against Doyle's
25 car?

26 A. I did.

27 Q. And you talked to the person?

28 A. I spoke to him.

29 Q. Do you know who that person is you saw leaning

Katherine Snow - DIRECT

1 against the car?

2 A. I do.

3 Q. Who is it?

4 A. Curtis Flowers.

5 Q. Do you see him in the courtroom today?

6 A. Yeah, I do.

7 Q. Would you point to him and identify him, please?

8 A. Right there.

9 BY MR. EVANS: May the record reflect that she
10 has identified the Defendant Curtis Flowers?

11 BY THE COURT: Let the record reflect that.

12 BY MR. EVANS:

13 Q. Ms. Snow, I'm going to show you a photograph,
14 State's Exhibit 100A, 99A, and 101A. Have you seen this car
15 before?

16 A. I have.

17 Q. Whose car is that?

18 A. Doyle Simpson.

19 Q. Is that the same car you saw this Defendant leaning
20 up against at Angelica about 7:15 on the morning of July the
21 16th, 1996?

22 A. It is.

23 Q. About how far away from him were you?

24 A. He was at the first parking spot, and I just walked
25 out the door and just, you know, passed car length passing
26 distance right there. And so I can't give you exact feet,
27 but it wasn't that far.

28 Q. How long before this day had you known the
29 Defendant?

Katherine Snow - DIRECT

1 A. I have seen him at singing in the group. I had
2 seen him in November at the, for, I mean at the Cardinal
3 Center anniversary.

4 Q. Did the law enforcement officers show you a photo
5 lineup?

6 A. They did.

7 Q. Did you have any problem picking him out of that
8 lineup?

9 A. I didn't.

10 Q. What part of Doyle's car was Curtis Flowers leaning
11 on?

12 A. It was on the front end side. It was on the
13 driving side, on the front.

14 Q. Ms. Snow, are you familiar with whether or not
15 Angelica is on the east side of Highway 51 or not?

16 A. As far as directions, not right off.

17 Q. You are not too good at directions?

18 A. Uh-hum. I get my east and west screwed up most of
19 the time. North and south pretty good.

20 Q. All right.

21 BY MR. EVANS: One moment, Your Honor.

22 (State's Counsel confer.)

23 Q. Ms. Snow, is there any doubt in your mind that this
24 is the person that was leaning up against Doyle's car at
25 about 7:15 on the morning of the murders at Tardy Furniture?

26 A. No doubt.

27 BY MR. EVANS: I will tender the witness, Your
28 Honor.

29 BY MR. CARTER: One moment.

Katherine Snow - CROSS

CROSS-EXAMINATION BY MR. CARTER:

1 Q. How are you doing, Ms. Snow? I am Ray Carter.

2 A. All right. You?

3 Q. What hours were you working at Angelica back at
4 that time?

5 A. From 7:00 to 3:30.

6 Q. Now what time did you tell us it was that you saw
7 this person by the car?

8 A. 7:15.

9 Q. How are you sure about exactly the moment?

10 A. Because when I went in and I sewed my few garments
11 I had up, I knew what time it was when I went up there and
12 talked to my supervisor.

13 Q. So you went, you went and talked to your supervisor
14 at 7:15?

15 A. Uh-hum.

16 Q. How far is the walk from where your supervisor--
17 how far was your car from where the supervisor is?

18 A. The supervisor was, she was in -- my car was on the
19 end, the far end.

20 Q. Okay. I'm trying to picture it, and I'm having a
21 hard time. Did you walk as far as the back of the room, the
22 courtroom to get to your car from the supervisor's office?

23 A. To get to the supervisor. The supervisor was on
24 the floor, on the line.

25 Q. Supervisor was on the floor, okay. After you left
26 the supervisor, could you give me some idea how far was your
27 car? Is it past the back of the courtroom?

28 A. It is.

Katherine Snow - CROSS

1 Q. Is it all the way to Summit out there?

2 A. No, not way out there.

3 Q. Is it half way?

4 A. It's about somewhere along there.

5 Q. Would it be completely out of the building?

6 A. Completely out of the building?

7 Q. Out of this building.

8 A. Uh-hum. It will.

9 Q. Now what is the name of that supervisor you got the
10 permission from?

11 A. Linda Tansey.

12 BY THE COURT REPORTER: Pardon?

13 BY THE WITNESS:

14 A. Linda Tansey. T A N S E Y.

15 Q. Now are you sure that person you saw wasn't laying
16 on the front of the car? When you say front, are you talking
17 about the front, or are you talking about the side front?

18 A. Side front.

19 Q. Okay, on the driver's side, the left side?

20 A. (Witness nods her head.)

21 Q. How long did it take you to move your car and go
22 back inside?

23 A. Just long enough for me to walk up there, get in
24 it, pull it on the back line, and walk down. Now the exact
25 time frame--

26 Q. Would it take five minutes to do that?

27 A. It might have, I wouldn't say exactly five.

28 Q. Okay, now this person that you saw, how long did
29 you see this person?

Katherine Snow - CROSS

1 A. Spoke to him, looked directly at him, spoke to him
2 and went on up.

3 Q. Okay. What kind of clothing did they have on?

4 A. I know for sure it was a white shirt, T-shirt like,
5 but I can't exactly -- pants, I'm not for sure.

6 Q. Did that person have glasses on?

7 A. That day? (Pause.) I'm not even for sure.

8 Q. How tall was the person?

9 A. He was medium height.

10 Q. How tall is medium height?

11 A. Taller than me. It was about 5'3", 5'4", 5'5",
12 somewhere along in there.

13 Q. Okay. Okay, and you told Mr. Johnson that; is that
14 correct? You told Mr. Johnson that?

15 A. When they called me in at 3:30-- uh 25 that day.

16 Q. How many times did you talk to Mr. Johnson?

17 A. I can't give you an exact amount.

18 Q. It was more than one, wasn't it?

19 A. It was more than one.

20 Q. Do you know if it was more than two?

21 A. More than two.

22 Q. The first time you talked to him, you talked to him
23 at Angelica; is that correct?

24 A. That's correct.

25 Q. The second time you talked to him, where were you?

26 A. They had me come down to police station.

27 Q. Okay, Winona Police Department?

28 A. Uh-hum.

29 Q. And the third time you talked to him, where would

Katherine Snow - CROSS

1 that have been?

2 A. Every time I went to talk to him it was down at the
3 police station.

4 Q. How many times did you see them before they showed
5 you some photographs?

6 A. The exact number of times, I'm not for sure.

7 Q. Why did they keep coming to you so many times? Do
8 you know?

9 A. I don't know.

10 Q. Now on the first occasion when the police talked --
11 strike that. Did you always talk to the same police officer
12 or the same investigator?

13 A. Same ones.

14 Q. Did you say one or ones?

15 A. Ones with an "S".

16 Q. Okay. Who else did you talk to, if you remember?

17 A. I talked to him. (Witness points.)

18 Q. This investigator? Mr. Evans? Who else was there
19 besides Mr. Evans and Mr. Johnson?

20 A. I can't remember who was out there.

21 Q. Okay. I'm not trying to confuse you now.

22 A. I know it.

23 Q. Stop me if I'm upsetting you a little bit.

24 A. No.

25 Q. Just tell me you need a break. Okay. You all
26 right?

27 A. I'm all right.

28 Q. Now on the first occasion, you were not shown any
29 pictures to identify the person; is that correct?

Katherine Snow - CROSS

1 A. No, I wasn't.

2 Q. And you may not be sure, but on the second occasion
3 were you shown some pictures?

4 A. I'm not for sure.

5 Q. And do you remember about what month you were shown
6 the pictures?

7 A. I'm not for sure.

8 Q. Was it about two or three months?

9 A. I don't think it was that long, but I'm not for
10 sure.

11 Q. Did you hear about, did you ever hear there was a
12 reward out, a monetary reward out?

13 A. Later on.

14 Q. Do you know if you identified the person before or
15 after you heard about the reward?

16 A. I knew who it was before the reward.

17 Q. Did you tell anybody at Angelica or any other
18 place?

19 A. I told Doyle Simpson.

20 Q. Huh?

21 A. Doyle Simpson.

22 Q. Okay, speaking of Doyle Simpson, did you tell Doyle
23 Simpson the day that the car was broken into and the day of
24 the murders, or did you tell him another day?

25 A. Another day.

26 Q. Okay, what, how long thereafter the murders
27 occurred did you tell Doyle Simpson?

28 A. I'm thinking it was the next day.

29 Q. Okay. Now are you sure Doyle wasn't off work for a

Katherine Snow - CROSS

1 few days?

2 A. I talked -- I know he was suspended for a few days.

3 Q. Okay, and you talked to him after he came back from
4 the suspension?

5 A. I talked to him when I seen him again, yeah.

6 Q. Now on the day that the car was broken into, you
7 saw Doyle; is that correct?

8 A. When I saw Doyle, that's when I seen all the police
9 and stuff was there. I really didn't know what was going on
10 at the time.

11 Q. Okay, but did you get a chance to see Doyle that
12 day when the police were not standing around or sitting
13 around or whatever they were doing? In other words, I think
14 I might need to clarify a little bit for you. Did you see
15 Doyle when the police were not there, when it was just you
16 and Doyle or some other employees except from the police
17 department?

18 A. Yeah, because I work with him.

19 Q. Okay, so you saw him later that day after the
20 police had already gone on the day that the murders occurred?

21 A. I'm trying to remember if he finished working that
22 day. (Pause) If he worked, finished working, if he finished
23 working that day, I talked to him.

24 Q. Okay. I take that to mean you are not really sure
25 if you talked to him on that particular day or not; is that
26 correct?

27 A. I'm not for sure.

28 Q. What kind of car did you have back then?

29 A. I had a black Regal Buick.

Katherine Snow - CROSS

1 Q. I'm sorry? What kind?

2 A. A black Regal Buick.

3 Q. Okay. How long after the crime did you tell the
4 police that the person you saw was Curtis Flowers?

5 A. It wasn't that long after.

6 Q. Okay, now you didn't tell them it was Curtis
7 Flowers the first day; is that correct?

8 A. Correct.

9 Q. You didn't tell them it was Curtis Flowers the
10 second day; is that correct?

11 A. That's correct.

12 Q. You didn't tell them it was Curtis Flowers the
13 third day; is that correct?

14 A. I didn't give his name because I didn't want no
15 part of it, didn't want to be involved in it.

16 Q. And excuse me for being, for not understanding
17 that, but so you are saying -- and correct me if I am wrong
18 because I don't want to put words in your mouth -- you saw
19 this person; you knew who it was. You knew his name, but you
20 told the police on the day that the crime occurred that you
21 didn't know his name?

22 A. I was scared to death.

23 Q. You were scared to tell?

24 A. I was scared.

25 Q. What were you scared of, ma'am?

26 A. Because I never had been, you know, had any
27 relationship or anything to go on like that, and I was just
28 scared because I like to stay away from trouble. I am a
29 scary, I was just scared.

Katherine Snow - CROSS

1 Q. I can understand. Let give you a moment. Take a
2 deep breath.

3 A. Oh, I am all right.

4 Q. You were afraid because the gun was stolen, and
5 that's why you didn't tell them, because you had heard that a
6 gun was taken or stolen and you were afraid to tell the
7 police who the person was because of that. Is that what you
8 are saying?

9 A. No, I just scared period. I get -- no.

10 Q. Okay. Well, what happened to cause you to lose the
11 fear and fright that you had? Did something come about that
12 alleviated, took away all the fear and the fright and gave
13 you the power to talk to the police?

14 A. I still fear that. I still fear because, you know,
15 this just to me, this is something that I just not, it's not
16 something I do every day, you know, be involved in, you know.
17 I'm just nervous about it.

18 Q. Okay, I'm still trying to understand. Now as best
19 you can tell me, how many times were you shown pictures of
20 photographs?

21 A. Once.

22 Q. And who was the person that showed you those?

23 A. It was John Johnson, the officer, and I know he was
24 in there. (NOTE: Witness is pointing to Mr. Evans.)

25 Q. Now on this particular day when you made the
26 identification, were you also afraid that day?

27 A. I was.

28 Q. Well, how is it that you could make the -- and I'm
29 not trying to pick on you. I'm just trying to understand.

Katherine Snow - CROSS

1 How is it that you could make the identification that day,
2 but you couldn't make it earlier?

3 A. I had no--

4 Q. -- What was different?

5 A. What was different?

6 Q. If anything?

7 A. Because I knew -- well, he showed me and if I know
8 anything, you know, I knew the picture. You know, when he
9 showed me the identification, the pictures, I knew who it
10 was. And they asked me did I know, and I pointed him out.

11 Q. Do you read the newspaper, Ms. Snow?

12 A. Yeah, I read Snoopy.

13 Q. Did you read any stories about this case involving
14 Tardy's in the newspaper?

15 A. Yeah.

16 Q. Now could it have been sometime in August when you
17 found, when you actually made the identification of Curtis
18 Flowers?

19 A. I couldn't exactly tell you.

20 Q. Did you, did they ask you to write out a statement
21 saying that you identified Curtis Flowers? Did Mr. Johnson
22 or Mr. Evans?

23 A. I signed one.

24 Q. You signed a statement?

25 A. I think. I'm not for sure.

26 Q. So as best you can recall, you were asked to sign a
27 statement and you signed it?

28 A. I'm, uh, it being since '96 and -- but I do
29 remember what I seen that day because that constantly goes

Katherine Snow - CROSS

1 through my mind. And as far as I did from point to point
2 there, I couldn't exactly pinpoint it all.

3 Q. Now do you know if they were taping you? Did you
4 see a tape recorder? Were you told that this conversation
5 was being taped? I realize you are trying to recall.

6 A. Yeah, I'm trying to recall because--

7 Q. -- Do the best you can.

8 A. I don't want to add nor subtract, but I'm not for
9 sure.

10 Q. And it is your testimony that at some point you
11 told Doyle Simpson also that you saw Curtis at his car; is
12 that correct?

13 A. I did.

14 Q. And did you give Doyle Simpson a description--

15 A. I did.

16 Q. -- of the clothes that Curtis had on that
17 particular day?

18 A. I probably did describe -- I knew it was a white
19 shirt involved, and I'm not for sure, but I am thinking black
20 jeans. I'm not for sure.

21 Q. Now you also told somebody at Angelica that you had
22 seen somebody leaning against the car; is that correct?

23 A. I did.

24 Q. Who did you tell?

25 A. Frances Forrest. At the time she was Frances Meek.

26 Q. Did you tell anybody else?

27 A. Well, she went running to my supervisor and the
28 plant manager, told her.

29 Q. Now this person you saw at the car, you saw them

Katherine Snow - CROSS

1 when you were going to move your car?

2 A. To move it.

3 Q. Once you removed your car and you were headed back
4 into the building, did you see that person again?

5 A. I didn't.

6 Q. Give us some idea how long you had a chance to
7 observe this person or see this person?

8 A. Just long enough to walk out the door, look at him,
9 and walk on up. That was it. I never looked back.

10 Q. Okay, did you see this person go in the car at any
11 time?

12 A. I didn't.

13 Q. In fact, he wasn't even by the door, was he?

14 A. He was on the front fender like.

15 Q. Now were you shown one set of pictures or two sets
16 of pictures?

17 A. One.

18 Q. You didn't see this person with a weapon or
19 anything, did you?

20 A. I didn't.

21 Q. Other than the person leaning up against the car,
22 you didn't really see anything suspicious about the person's
23 activity or conduct; is that correct?

24 A. I didn't.

25 Q. Wasn't doing anything illegal or improper?

26 A. Nothing.

27 Q. Was he doing anything to make you notice him, or
28 you just noticed him because he was in your line of--

29 A. --He was just, you know, right standing, I mean

Katherine Snow - CROSS

1 just leaning up there when I walked out there. I just spoke
2 and kept going.

3 Q. So would it be fair to say you saw this person
4 maybe two or three seconds? A quick little glance?

5 A. I had seen him enough to know who it was, but you
6 know, I didn't linger around to hold a conversation or
7 nothing.

8 Q. Now at the time, this person that you saw, did you
9 know this person was any kin to Doyle Simpson?

10 A. No, I didn't.

11 Q. Now did you tell -- you told Doyle about seeing
12 this person after you had also heard about the murders; is
13 that correct, or before?

14 A. It was after. I didn't know nothing was going on,
15 nothing about a murder when I first said I seen him.

16 Q. Now when the police talked to you on that first
17 day, July 16, 1996, was that Mr. Johnson by himself?

18 A. No, it wasn't.

19 Q. Who else was with him?

20 A. Him and it was some more in there.

21 Q. How many was it?

22 A. I couldn't tell you exactly how many.

23 Q. Did they mention Curtis Flowers' name to you?

24 A. No, they didn't.

25 Q. When the police talked to you on -- they didn't
26 mention his name, but you also didn't tell them that you knew
27 his name. Is that correct?

28 A. Correct.

29 Q. And none of those police officers -- I don't want

Katherine Snow - CROSS

1 to ask the same question. I'm not sure what I asked you
2 before. I think you have answered that question. Strike
3 that. Now isn't it a fact that you never told the police or
4 gave the police Curtis Flowers' name until they showed you
5 the photo lineup?

6 A. When they showed me the photo lineup.

7 Q. Did the person have a cap on?

8 A. Uh-uh. Didn't have no cap on.

9 Q. Did you tell the police that?

10 A. No, I didn't.

11 Q. You also heard, saw information about this case on
12 the television; is that correct?

13 A. Correct.

14 Q. Now do you remember talking to a guy named Harvey
15 Freelon?

16 A. I do.

17 Q. Isn't it a fact that you told Harvey Freelon that
18 you identified the person as Curtis Flowers on the second
19 interview with the police?

20 A. I remember talking to him. And I also remember him
21 confusing me, just talking, you know.

22 Q. Do you understand my question?

23 A. I understood what you said.

24 Q. Let me repeat it. Isn't it a fact that you told
25 Harvey Freelon that you identified the person you saw at the
26 car as Curtis Flowers the second time you talked to the
27 police?

28 A. I remember talking to him, and as far as when he
29 came, because when he came to my house, when he came and

Katherine Snow - CROSS

1 talked to me at, as far as I remember telling him that I did
2 identify him. But I can't remember what, how many times I
3 told him I did, I mean what date.

4 Q. So is that a yes or a no, or I don't know?

5 A. I don't know. I'm not for sure.

6 Q. Now by the time you talked -- strike that. By the
7 time you identified Mr. Flowers as the person you saw at the
8 car, had there been a lot of community gossip about what had
9 happened and who might have been involved?

10 A. It was a lots of gossip around because everyone
11 loves to talk.

12 Q. And you talked to the police three or four times,
13 and they never mentioned Curtis Flowers' name to you a single
14 time?

15 A. They didn't give me no names.

16 Q. Had you ever been to Tardy's before the murders
17 occurred?

18 A. No, I haven't.

19 Q. You had never been there?

20 A. No more than passing by.

21 Q. Okay. Have you purchased any furniture or
22 established an account at Tardy's since the murders?

23 A. I haven't.

24 Q. Did you write out a statement from the police --
25 sorry; strike that. Did you write out a statement for the
26 police in your own handwriting?

27 A. No, I'm not -- no, I didn't.

28 Q. Hum?

29 A. I didn't.

Katherine Snow - CROSS - REDIRECT

1 Q. You didn't? I apologize if this offends you, but
2 you can read and write; is that correct?

3 A. Yes, I can.

4 BY MR. CARTER: One moment.

5 (Defense Counsel confer.)

6 BY MR. CARTER:

7 Q. Ms. Snow, now you told me earlier that you read the
8 papers from time to time, and you read accounts about the
9 killings at Tardy's.

10 BY MR. CARTER: May I approach, Your Honor?

11 BY THE COURT: Uh-hum.

12 BY MR. CARTER:

13 Q. What is that I'm passing you? Do you know?

14 A. It's a cash reward offered for information.

15 Q. And right here, what date does that show?

16 A. July the 25th.

17 Q. What year?

18 A. 1996.

19 Q. And isn't it a fact that you told the police on
20 August the 19th, 1996, that that person you saw was Curtis
21 Flowers?

22 A. I couldn't give you an exact date.

23 BY MR. CARTER: No further questions.

24 REDIRECT EXAMINATION BY MR. EVANS:

25 Q. Very briefly, Ms. Snow; just a couple of things.
26 When did you first find out, if you remember, when the gun
27 had been stolen out of Doyle's car?

28 A. It was around about, because it was right before my
29 break. And then that's when I seen all the police and stuff

Katherine Snow - REDIRECT

1 there, and I asked what was going on because I had my ear
2 phone on. I always play my cassette tapes, and I asked what
3 was going on. They told me Doyle's gun was stolen, and I
4 said, I seen a guy leaning up against Doyle's car.

5 Q. Do you know who was leaning against Doyle's car?

6 A. I do.

7 Q. Who was leaning against Doyle's car?

8 A. Curtis Flowers.

9 BY MR. EVANS: Nothing further.

10 BY THE COURT: Is she finally excused?

11 BY MR. CARTER: No, sir. Subject to recall.

12 BY MR. EVANS: As far as the State is concerned.

13 BY THE COURT: Okay. Ms. Snow, you will need to
14 go back to the witness room.

15 WITNESS LEAVES THE COURTROOM.

16 BY MR. EVANS: You want to break for lunch now?

17 BY THE COURT: Yeah. All right, ladies and
18 gentlemen, it is ten to 12:00. We will take the lunch
19 break at this time and start back at 1 o'clock. I am
20 leaving you with the same instructions I have given
21 you before.

22 (FOLLOWING THE NOON RECESS ON FEBRUARY 7, 2004, THE
23 TRIAL CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
24 DEFENDANT, AND THE JURY PRESENT:)

25 BY MR. EVANS: Ms. Beneva Henry.

26 BENEVA HENRY,
27 a black female called to testify as a witness by the State of
28 Mississippi, having first been duly sworn, testified as
29 follows, to-wit:

Beneva Henry - DIRECT

1 BY THE COURT: Would you state your name, please,
2 ma'am.

3 BY THE WITNESS: Beneva Henry.

4 BY MR. EVANS: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. EVANS:

6 Q. Good evening, Ms. Henry.

7 A. Good evening.

8 Q. I'm going to step up here close. You have a
9 problem seeing now, don't you?

10 A. I do.

11 Q. And how long have you had that problem?

12 A. Um, about, over a year, going on two.

13 Q. Okay. Ms. Henry, I want to direct your attention
14 back to the morning of the killings at Tardy Furniture. Do
15 you remember that morning?

16 A. I do.

17 Q. I want to direct your attention specifically --
18 well, first let me ask you where you live?

19 A. I live on Campbell Street.

20 Q. Okay, and is that on the east side of Highway 51?

21 A. It is.

22 Q. I want to direct your attention to the time on the
23 day of the killings between around 9:00 and 9:30 in the
24 morning. Where were you at that time?

25 A. On my porch.

26 Q. Was anyone with you?

27 A. Another lady.

28 Q. And who was that?

29 A. Ms. Latham.

Beneva Henry - DIRECT

1 Q. Okay, Ms. Henry, do you know Curtis Flowers?

2 A. I do.

3 Q. Did you have an occasion during that time on the
4 morning of the murders to see Curtis Flowers?

5 A. I did.

6 Q. Where was he going?

7 A. Down the street.

8 Q. Down Campbell Street?

9 A. Down Campbell Street.

10 Q. Where was he in relationship to your house?

11 A. He was in the road really.

12 Q. Okay. Was he going in the direction of 51 or in
13 the direction of downtown?

14 A. In the direction of downtown.

15 Q. And Ms. Henry, how long had you known Curtis
16 Flowers at that time?

17 A. Well, I have known him since he was a child, not
18 personally but I know him when I see him. I don't really
19 know him, but I know him when I see him.

20 Q. Okay. Is there any doubt that that was the person
21 that was walking in front of your house at that time?

22 A. Oh, I know that was him.

23 BY MR. EVANS: Tender the witness, Your Honor.

24 BY MR. CARTER: One moment, Your Honor.

25 (Defense Counsel confer.)

26 CROSS-EXAMINATION BY MR. CARTER:

27 Q. Good afternoon, Ms. Henry. I'm Ray Carter. Can
28 you hear me?

29 A. I can.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1321-1470

VOLUME 17 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Beneva Henry - CROSS

1 Q. Do you remember what time you saw Curtis Flowers?

2 A. I don't know the exact time, but it was after
3 9:00.

4 Q. Okay, was it before 9:30?

5 A. I'm not sure, but it could have been.

6 Q. Okay, why do you think it was after 9:00? What do
7 you base that on?

8 A. Well, it was after 9:00 when I came outside.

9 Q. Okay. And how do you know that? Did you look at a
10 clock?

11 A. I didn't look at a clock. I was listening to the
12 television.

13 Q. And forgive me for rambling through my notes, but
14 now where did you say you saw him?

15 A. I saw him pass my house.

16 Q. And your house is located where?

17 A. I was on the porch.

18 Q. Ma'am, what is your address?

19 A. 504 Campbell Street. At that time it was 512.

20 Q. Okay, and is that located on the east or west side
21 of Highway 51 or Applegate?

22 A. East.

23 Q. It's on the east side. And you were with your
24 friend. What is your friend's name?

25 A. Ms. Latham.

26 Q. Ms. Latham. Was anybody else there with you?

27 A. No.

28 Q. And do you recall what his dress of clothing were
29 then? What kind of pants did he have on? Do you know?

FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY _____

DC

Beneva Henry - CROSS

1 A. He had on some shorts.

2 Q. Do you remember what color they were?

3 A. I think they were white.

4 Q. Okay. Did you give a statement to anybody?

5 A. Somebody came over there and questioned.

6 Q. Ma'am?

7 A. Somebody came over there. Uh, Mr. Evans -- I don't
8 remember who questioned me the first time. I guess it was
9 Mr. Evans.

10 Q. Okay. One moment.

11 (Mr. Carter confers with Mr. Evans.)

12 BY MR. CARTER: One moment, Your Honor.

13 BY MR. CARTER:

14 Q. Ms. Latham, do you recall -- and I apologize if you
15 have already answered this. What were you doing when you saw
16 Mr. Flowers?

17 A. Sitting on the porch.

18 Q. And what was Mr. Flowers doing?

19 A. Going down the street.

20 Q. Okay. And have you seen him walking down that
21 street before?

22 A. I am sure I have.

23 Q. Now the police or somebody came and talked to you.
24 Do you remember when they came and talked to you?

25 A. I sure don't.

26 Q. Okay, I have a report here that says September the
27 3rd, 1996. Can you dispute that, or would you dispute that
28 maybe that's when it happened?

29 A. I don't know really. I guess it was.

Beneva Henry - CROSS

1 Q. Do you remember when the killings took place at
2 Tardy's?

3 A. Yeah, I remember.

4 Q. They came and they talked to you several months
5 after the killing at Tardy's; is that correct?

6 A. I don't know if it was months. I really don't
7 know, but it was after, afterwards.

8 Q. Okay. Now Ms. Henry, can you see well enough now
9 to read a document?

10 A. Not without a magnifying glass.

11 Q. Anybody got a magnifying glass?

12 A. And I might not be able to see it then. It depends
13 on how strong it is.

14 Q. Now the report I'm looking at, it shows that a John
15 Johnson with the District Attorney's Office and a Robert
16 Jennings, investigator with the District Attorney's Office,
17 talked to you. Does that sound like the gentlemen you talked
18 to?

19 A. I don't know.

20 Q. And it also shows the date of September 3, 1996,
21 and it shows the time at 4:24 PM. Is that when it happened?

22 A. When he talked?

23 Q. When they talked to you; yes, ma'am.

24 A. I don't know. It has been a long time.

25 Q. So you don't remember when you talked to them. Did
26 you talk to Mr. Flowers that day?

27 A. I spoke to him.

28 Q. You don't know where he went after he passed your
29 house, do you?

Beneva Henry - CROSS

1 A. I sure don't.

2 Q. So you are not trying to tell this Court that he
3 went downtown; is that correct?

4 A. No, I'm not. I can't tell them that because I was
5 on my porch, and between my house and downtown, it's a lot of
6 places he could have turned or could have stopped. I just
7 know he passed my house.

8 Q. Yes, ma'am. And when you saw Mr. Flowers, he was
9 just simply walking by; is that right?

10 A. Just walking by like any other young man.

11 Q. Now with respect to his clothing, correct me if I'm
12 wrong, but I think you just told me a few minutes ago the
13 only thing you can remember was maybe a white shirt?

14 A. I thought he had on -- I thought he had on--

15 Q. --or white pants; I'm sorry?

16 A. White shorts.

17 Q. Okay, I didn't mean that. I'm sorry for
18 mischaracterizing what you said. And as far as you could
19 tell, you didn't give the police any other description of his
20 clothing as far as you can remember?

21 A. I don't know. I may have.

22 Q. But you just don't remember; is that correct?

23 A. Uh-hum. But I think they were white.

24 Q. Do you remember whether he had a cap on or not?

25 A. He was bare headed.

26 BY MR. CARTER: One moment.

27 (Defense Counsel confer.)

28 BY MR. CARTER: No further questions.

29

Beneva Henry - REDIRECT

REDIRECT EXAMINATION BY MR. EVANS:

Q. Ms. Henry, which direction from your house is Tardy Furniture?

A. You go down the street, but then you got to make some turns.

Q. Yes, ma'am. But just from your street, which direction would you go to go in the direction of Tardy Furniture?

A. Go east.

Q. And which direction was he walking?

A. East.

Q. Is there any doubt in your mind that Curtis Flowers was walking down the street in front of your house headed east between 9:00 and 9:30 on the morning of the murders at Tardy Furniture?

A. I think it was around that time. I know it was after 9:00, but I can't pinpoint the time.

Q. All right. Thank you, ma'am.

BY MR. EVANS: Nothing further. We would ask that she be excused, Your Honor.

BY MR. CARTER: She is excused. No further questions.

BY THE COURT: You are free to go, ma'am.

WITNESS EXCUSED.

BY THE COURT: Who will you have next?

BY MR. EVANS: Edward McChristian.

EDWARD LEE McCHRISTIAN,

a black male called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as

Edward McChristian - DIRECT

follows, to-wit:

BY THE COURT: State your name.

BY THE WITNESS: Edward Lee McChristian.

DIRECT EXAMINATION BY MR. EVANS:

Q. Mr. McChristian, how are you doing this evening?

A. All right.

Q. Where do you live, Mr. McChristian?

A. 603 Academy.

Q. Is that the same place you were living in 1996?

A. Yes, sir.

Q. Mr. McChristian, I have just got a few questions for you. Do you remember the morning of the murders of Tardy Furniture here in Winona?

A. Yes, sir.

Q. Did you happen to see a person by the name of Curtis Flowers that morning?

A. Yes, I did.

Q. Where were you when you saw him?

A. Sitting on my porch.

Q. Was anyone with you there?

A. Yes.

Q. Who was with you?

A. Bernard Seals and Clarence Forrest.

Q. Approximately what time did you see Curtis Flowers?

A. Between 7:30 and 8 o'clock.

Q. What was he doing when you saw him?

A. He was just walking.

Q. Which direction was he walking?

A. Well, he was coming up south Academy going north.

Edward McChristian - DIRECT - CROSS

1 Q. Are you familiar with where Angelica was at that
2 time? The factory Angelica?

3 A. Yes.

4 Q. In relationship to the factory Angelica, was he
5 walking toward it, away from it, or which direction?

6 A. Away from it.

7 Q. How long had you known Curtis Flowers at that time?

8 A. Well, I have been knowing him, but I just, I never
9 just really fooled with him. I knew him.

10 Q. But you had known him for a long time?

11 A. Yeah.

12 Q. Is there any doubt in your mind that it was Curtis
13 Flowers that walked by your house in the direction away from
14 Angelica around 7:30 or 8 o'clock on the morning of the
15 murders?

16 A. No doubt.

17 Q. Do you see him in the courtroom today?

18 A. Yes, sir.

19 Q. Would you point to him and identify him, please?

20 A. Right there.

21 BY MR. EVANS: May the record reflect that he has
22 identified the Defendant Curtis Flowers?

23 BY THE COURT: Let the record reflect that.

24 BY MR. EVANS: I will tender the witness, Your
25 Honor.

26 CROSS-EXAMINATION BY MR. CARTER:

27 Q. How are you doing, Mr. McChristian? My name is Ray
28 Carter. Mr. McChristian, how long have you been living at
29 603 Academy?

Edward McChristian - CROSS

1 A. Well, I can't tell you. About--

2 Q. A lot of years?

3 A. A lot of years.

4 Q. You have seen Curtis or other people walk down that
5 street many times, haven't you?

6 A. Oh, yeah.

7 Q. So it's not uncommon to see people walking that
8 street--

9 A. -- oh, no.

10 Q. Now you didn't see Curtis Flowers go to Angelica
11 manufacturing plant, did you?

12 A. (Witness shakes his head.)

13 Q. And you didn't see him leave Angelica manufacturing
14 plant?

15 A. No.

16 Q. And you don't know where Curtis Flowers went that
17 morning, do you?

18 A. No.

19 Q. And you are not trying to tell these people that he
20 went to Angelica's, are you?

21 A. No.

22 Q. What did Mr. Flowers have on that morning?

23 A. Man, I don't know.

24 Q. Because you didn't really pay attention to that,
25 did you?

26 A. No. Once I looked and seen his face, I knew who he
27 was. I just--

28 Q. Did you talk to the police?

29 A. No.

Edward McChristian - CROSS

1 Q. Did you talk to John Johnson?

2 A. Yes.

3 Q. And what is his position? He used to be the police
4 chief, but he is not the chief any more; is that right?

5 A. Yeah.

6 Q. And when you talked to him, you didn't view him as
7 being a police officer? Did he tell you who he worked for?

8 A. Yeah.

9 Q. Who did he tell you he worked for?

10 A. Well, he said he was a private investigator or
11 something like that.

12 Q. Did he say who his boss was?

13 A. No, I didn't ask.

14 Q. Now as far as my notes and the note that you gave
15 Mr. Johnson, do you deny that you told Mr. Johnson that he
16 had on baggy pants, or do you know whether you said that?

17 BY MR. EVANS: Your Honor, I would ask to start
18 with, if we are going to start talking about
19 statements, that the statements be marked for
20 identification.

21 BY MR. CARTER: I do not have to mark this just
22 to ask a question.

23 BY THE COURT: I don't think so. Go ahead.

24 BY MR. CARTER:

25 Q. Do you know -- and I'm not trying to trick you or
26 anything. But do you know whether you gave Mr. Johnson a
27 statement concerning what Mr. Flowers had on that day?

28 A. I might have. I can't remember that.

29 Q. Now let me ask you this. Now when Mr. Johnson came

Edward McChristian - CROSS

1 to talk to you that day, did he have a tape recorder running?

2 Did you see a tape reporter?

3 A. He didn't come to me. I went to him. They picked
4 me up.

5 Q. And took you to the police department?

6 A. Right.

7 Q. Is that correct?

8 A. Wherever. They just picked me up and carried me
9 with him.

10 Q. And all I'm trying to find out if I can, did they
11 bring you to the police department when they talked to you,
12 or did they take you some other place?

13 A. Well, wherever the place was, he was there, you
14 know. I didn't--

15 Q. Okay. And do you know where the police department
16 is here?

17 A. I do now.

18 Q. Okay. And I'm having a hard time understanding.
19 So what you are telling me, the place they took you, you are
20 not sure if it was the police department or not?

21 A. Well, I guess it was. They picked me up and
22 carried me there, so I guess it was.

23 Q. Okay. Did they ask you to write out a statement in
24 your own handwriting?

25 A. No.

26 Q. Did the person talked to you ask you to sign
27 something that they wrote?

28 A. No.

29 Q. How long were you there?

Edward McChristian - CROSS

1 A. Maybe 30 minutes.

2 Q. Maybe 30 minutes. And were they talking to you
3 pretty much that whole 30 minutes?

4 A. I think, yeah.

5 Q. And isn't it a fact that they talked to you on
6 August the 15th, 1996, which was like a month after the
7 accident; I'm sorry, a month after the killings had taken
8 place at Tardy's?

9 A. I don't remember, sir. I don't think so.

10 Q. I have to ask you another question, Mr.
11 McChristian, and I don't want to embarrass you; and I don't
12 mean to embarrass you, but do you read and write?

13 A. Yeah. When I can see.

14 Q. Do you need glasses to see?

15 A. Now.

16 Q. You do now.

17 BY MR. CARTER: May I approach the witness, Your
18 Honor?

19 BY THE COURT: Yes.

20 BY MR. CARTER:

21 Q. Can you look at this, sir, and tell me whether you
22 can make out any portion of it? Starting at the top, the
23 first line?

24 A. (Witness begins reading to himself.)

25 Q. What date is shown there if you can read it?

26 A. August 15, 1996.

27 Q. Okay. So can -- so isn't that -- well, why don't
28 you read this first paragraph under there?

29 BY MR. EVANS: Your Honor, I would like for

Edward McChristian - CROSS

1 anything that is going to be read to be marked for the
2 record for identification.

3 BY THE COURT: At least, it has got to be marked
4 for identification.

5 BY MR. CARTER:

6 Q. Let me see it again, Mr. McChristian.

7 BY THE COURT: If he is going to read from it, it
8 has got to be evidence.

9 BY MR. EVANS: Yes, sir.

10 BY MR. CARTER: Hold on a minute.

11 (Defense Counsel confer.)

12 BY MR. CARTER:

13 Q. Okay, now Mr. McChristian, I think I'm finished
14 with you. I am trying to nail down this date as best I can.
15 Do you remember whether the police came and talked to you
16 close to the time that the murders occurred, or was it a few
17 weeks afterwards?

18 A. When it first happened?

19 Q. No, I'm trying to find out, yes, when the police
20 first talked to you. Was that several weeks after--

21 A. -- no--

22 Q. --murders at Tardy's?

23 A. Uh-uh. When they, they came and got me that
24 evening, I think.

25 Q. That evening that the murders took--

26 A. --Yes, sir. Somebody come out there and told me,
27 but I didn't even know it myself until somebody come and got
28 me.

29 Q. Okay. Now how many times did you talk to the

Edward McChristian - CROSS

1 police?

2 A. They didn't, I didn't talk to them, Mr. Johnson but
3 one time at that time.

4 Q. Okay, did you talk to anybody else with the police
5 department?

6 A. Oh, no. Uh-uh.

7 BY MR. CARTER: No further questions.

8 BY MR. EVANS: Nothing further of this witness,
9 Your Honor.

10 BY THE COURT: Is he finally excused?

11 BY MR. EVANS: Yes, sir.

12 BY THE COURT: You are free to go, Mr.
13 McChristian.

14 WITNESS EXCUSED.

15 BY THE COURT: Who do you have next?

16 BY MR. EVANS: I need to check and see if one is
17 here. It may make a difference in the order. Can I
18 have just a second to run look?

19 BY THE COURT: Okay.

20 (Mr. Evans leaves the courtroom briefly.)

21 BY MR. EVANS: Doyle Simpson will be next, Your
22 Honor.

23 BY THE COURT: Mr. Simpson, have a seat over
24 here.

25 DOYLE SIMPSON,

26 a black male called to testify as a witness by the State of
27 Mississippi, having first been duly sworn, testified as
28 follows, to-wit:

29 BY THE COURT: State your name.

Doyle Simpson - DIRECT

1 BY THE WITNESS: Doyle Simpson.

2 BY MR. EVANS: May I proceed, Your Honor?

3 BY THE COURT: Yes.

4 DIRECT EXAMINATION BY MR. EVANS:

5 Q. Mr. Simpson, where do you live?

6 A. 141 Poorhouse Road.

7 Q. And is that where you were living back in '96?

8 A. Yes, I was.

9 Q. Mr. Simpson, do you know a person by the name of
10 Curtis Flowers?

11 A. Yes, I do.

12 Q. How do you know him?

13 A. He is my nephew.

14 Q. He is your nephew?

15 A. Right.

16 Q. I want to direct your attention back to July 16,
17 1996, the day of the murders at Tardy Furniture. Do you
18 remember that day?

19 A. Yes, I do.

20 Q. What did you do that morning?

21 A. I went to work that morning.

22 Q. And do you remember about what time you went to
23 work?

24 A. I think about, I got there about 6:15, 6:20.

25 Q. And what hours were you working there that day?

26 A. From 6:30 to 10:30.

27 Q. Did you work anywhere else during this time?

28 A. Yeah, I work at the school.

29 Q. Where?

Doyle Simpson - DIRECT

1 A. At the Winona, Winona, at the Vo-Tech Center.

2 Q. Okay, so you had two jobs?

3 A. Yes, sir.

4 Q. School and there?

5 A. Yes, sir.

6 Q. And what time did you say you arrived at work?

7 A. About, about 6:15 or 6:20.

8 Q. How did you go to work that day?

9 A. In my car.

10 Q. Mr. Simpson, I want to direct your attention over
11 to the easel at the diagram that shows a vehicle, Exhibits
12 100A, 99A, and 101A. Can you identify that car?

13 A. That's my car.

14 Q. Is that the car that you went to work in on the day
15 of the murders at Tardy Furniture?

16 A. Yes, sir.

17 Q. Tell us a little bit about that morning. What did
18 you do after you arrived at Angelica?

19 A. I went inside and punched in.

20 Q. Okay. What was the first time after you punched in
21 that you went back outside?

22 A. I went back about, about 9:15.

23 Q. What did you do at 9:15?

24 A. I went back and got my breakfast out of the car.

25 Q. When you went and got your breakfast out of the
26 car -- well, let me ask you this first. Did you lock your
27 car that day?

28 A. No. No, sir.

29 Q. Did you lock any part of your car?

Doyle Simpson - DIRECT

1 A. I locked my glove compartment that morning.

2 Q. Why did you lock your glove compartment?

3 A. Because I had the gun in it.

4 Q. What type of gun did you have in it?

5 A. A .380.

6 Q. Was that a .380 automatic?

7 A. It was a clip, yeah. Yeah.

8 Q. All right. Back to the 9:15, you say you went out
9 to get your breakfast out of the car?

10 A. Yes, sir.

11 Q. Did you notice anything about your glove
12 compartment at that time?

13 A. No, sir.

14 Q. Did you pay any attention to it one way or the
15 other?

16 A. No, sir.

17 Q. When was the next time that you went back outside?

18 A. Before I got ready to leave that morning.

19 Q. And about what time was that?

20 A. That was about, I think about 10:20, 10:25,
21 something like that.

22 Q. What did you do at that time?

23 A. I let my window down.

24 Q. Why did you do that?

25 A. Because it was hot.

26 Q. What type of windows did you have? Were they power
27 windows or roll up windows?

28 A. Power windows.

29 Q. Okay, what did you do to let your windows down?

Doyle Simpson - DIRECT

1 A. I would reach in, open the door, and turn the
2 switch on, and mash both buttons on the driver's side.

3 Q. All right, if you would, speak up just a little
4 bit.

5 A. I went to the, I went to the, open the door, turned
6 my switch on, and mashed both buttons, and it let the left
7 one down and the right one down.

8 Q. Okay. Did you notice or pay any attention to your
9 glove compartment at that time?

10 A. No, sir. I did not.

11 Q. All right, after you let your windows down, what
12 did you do next?

13 A. I went back inside.

14 Q. What was the next time that you went outside?

15 A. When I got ready to, when I got ready to leave.

16 Q. And what time was that?

17 A. After I had punched out. After I had punched out
18 that, to go get some lunch.

19 Q. Now who were you picking up lunch for?

20 A. For the peoples that work there.

21 Q. About how many different people were you picking up
22 lunch for?

23 A. I guess about eight. I guess, something like that.

24 Q. Okay, and about what time did you check out to go
25 pick up lunch for everybody?

26 A. That was something to 11:00.

27 Q. Something until 11:00?

28 A. Yes, sir. Between 10:30 and 11 o'clock.

29 Q. All right, at this time when you checked out to go

Doyle Simpson - DIRECT

1 pick up the lunches, what did you do?

2 A. When I got ready to leave, I realized -- when I got
3 in my car, I closed my door; my pocket fell open.

4 Q. Now pocket, what are you talking about?

5 A. Glove compartment on my car.

6 Q. When your glove compartment fell open when you
7 closed the door, did you notice anything?

8 A. Yeah, I noticed somebody had been in it.

9 Q. Was anything missing?

10 A. Yes, sir.

11 Q. What was missing?

12 A. The gun.

13 Q. Was the gun in there when you went to work that
14 morning?

15 A. Yes, sir.

16 Q. What did you do after you noticed your gun was
17 missing?

18 A. I went, I went next door. I went next door to IBP
19 and asked my brother and the other guys that worked in there
20 did they see anybody around my car that morning.

21 Q. Did any of them see anyone?

22 A. No, sir.

23 Q. What did you do next?

24 A. I went back in the plant.

25 Q. All right, why did you go back in the plant?

26 A. I went back and told my, told the plant manager
27 that somebody had broke in my car.

28 Q. Okay. After you reported that -- well, did you
29 also tell him that anything was missing?

Doyle Simpson - DIRECT

1 **BY MR. CARTER:** Objecting to the leading.

2 BY THE WITNESS:

3 A. Yes.

4 **BY THE COURT:** Overruled.

5 BY MR. EVANS:

6 Q. Did you also tell him anything was missing?

7 A. Yes.

8 Q. What, if anything, did you tell him was missing?

9 A. I told her, I told her that I had a gun in my car,
10 and somebody had got it.

11 Q. All right, after you reported your car broken into
12 and a gun missing to the plant manager, what did you do next?

13 A. I went, I went to Fuzzy's. I got in my car and
14 went to Fuzzy's then.

15 Q. All right, and that is the chicken plant--

16 A. --where you pick up the lunch, pick up the lunch,
17 right.

18 Q. While you were at Fuzzy's, did you have any
19 discussions with anyone?

20 A. Yes, sir. I did.

21 Q. What were the discussions about?

22 A. I had told Clarence May that my, somebody had
23 broken into my car that morning.

24 Q. Okay. Did you pick -- what did you do while you
25 were at Fuzzy's?

26 A. I placed the order.

27 Q. Okay. Did you wait on it?

28 A. No, I came back. I think I went back, and I came
29 back and got it.

Doyle Simpson - DIRECT

1 Q. All right, was that the only place you picked up
2 meals?

3 A. No, I went to the City Cafe.

4 Q. Do you know about how long it took you from the
5 time you checked out and left to go to Fuzzy's and City Cafe
6 and pick up all the meals and get back to Angelica?

7 A. Yeah, it was about, I guess it was about, about 45
8 minutes, something like that, I guess.

9 Q. When you got back, were there any law enforcement
10 officers there?

11 A. Yes, it was.

12 Q. Who was that officer?

13 A. Mr. Thornburg.

14 Q. Okay, and what, if anything, did you and Mr.
15 Thornburg do at that time?

16 A. He checked my car out.

17 Q. Okay. Mr. Simpson, you have described your
18 relationship with the Defendant. Do you know whether or not
19 he knew that you had a gun in your glove compartment?

20 A. Yes, he did.

21 Q. When you first reported that your gun was stolen to
22 law enforcement officers, did you tell them the truth about
23 where it came from?

24 A. No, I did not.

25 Q. Where did you originally tell them it came from?

26 A. I had bought it from my brother.

27 Q. And where, in fact, had you gotten it?

28 A. From a friend of mine.

29 Q. And who was that?

Doyle Simpson - DIRECT

1 A. Ike. I can't remember, I can't remember his real
2 name.

3 Q. Why did you not tell them the truth about where you
4 had gotten the gun?

5 A. About the gun.

6 Q. Why did you not tell them the truth about where you
7 had gotten the gun?

8 A. Because for, because for Curtis and myself.

9 Q. And why is that?

10 A. Because he is my nephew.

11 Q. At the time that you reported who you got the gun
12 from, did you have any reason to suspect Curtis?

13 A. No, I did not.

14 Q. Had you talked to anybody about Curtis or your car?

15 A. Not, not that day.

16 Q. Did you have an occasion - I believe it was a few
17 days later - to take any officers to where you had fired this
18 gun?

19 A. Yes, I did.

20 Q. Where did you take them?

21 A. To my mom's house.

22 Q. What did you show them there?

23 A. I showed them where, where I had been shooting the
24 gun at.

25 Q. Were you present when they removed anything from
26 the property?

27 A. Yes, I was.

28 Q. What did you see them remove?

29 A. They removed some bullets from where we had been

Doyle Simpson - DIRECT

1 down, where we had been shooting at.

2 Q. And who removed those bullets?

3 A. Uh, Officer Thornburg and a few more folks were out
4 there. I can't remember their names.

5 Q. All right. Do you know where Curtis Flowers was
6 living at that time?

7 A. He was still in the project.

8 Q. Do you know who he was living with?

9 A. Connie.

10 Q. Is that Connie Moore?

11 A. Connie Moore, yeah. Connie Moore.

12 Q. Did you at some point have a conversation with
13 Katherine Snow about your car?

14 A. Yes, I did.

15 Q. Do you remember when that was?

16 A. I think it was the day after that, the day after
17 the shooting, after the killing.

18 Q. What did she tell you about your car?

19 A. She said she saw somebody with a white cap, white
20 T- shirt and short pants that morning when she came in
21 standing by my car.

22 Q. Did she describe any physical conditions?

23 A. Kind of heavy side and short.

24 Q. Did she mention any names to you at that time?

25 A. No, she did not.

26 BY MR. EVANS: One moment, Your Honor.

27 Q. Mr. Simpson, the only thing that I can think of
28 that I still would like to cover with you; would you describe
29 a little bit for the ladies and gentlemen of the jury your

Doyle Simpson - DIRECT - CROSS
gun?

1

2 A. It's black.

3 Q. What caliber was it?

4 A. .380.

5 Q. And do you know the difference in a revolver and an
6 automatic?

7 A. Right.

8 Q. Was this gun a revolver or an--

9 A. Automatic.

10 Q. It had a clip that goes up in it; is that correct?

11 A. Yes, sir.

12 Q. How was it -- was it loaded?

13 A. Yes, it was loaded.

14 Q. How was it loaded?

15 A. It was loaded with a clip. It had two different
16 kind of bullets in it.

17 BY MR. EVANS: Your Honor, I tender the witness.

18 Wait one second.

19 (State's Counsel confer.)

20 BY THE COURT: Mr. Carter.

21 CROSS-EXAMINATION BY MR. CARTER:22 Q. Hello, Mr. Simpson. Mr. Simpson, I need you to
23 enlighten me on something. I'm afraid I'm not smart enough
24 to figure this out. How is lying about where you got the gun
25 is supposed to protect Curtis?

26 A. Sir?

27 Q. Tell me how lying to the police--

28 A. -- because he was my nephew.

29 Q. --about where you got the gun is going to protect

Doyle Simpson - CROSS

Curtis?

A. Because he is my nephew.

Q. Okay, even if you had gotten the gun from the -- okay, explain that. I don't understand. I know he is your nephew.

A. Uh-huh.

Q. How is he your nephew?

A. By my, by my daddy. By my daddy.

Q. You are his mom's brother?

A. My daddy's side, his granddaddy.

Q. You bought the gun from your uncle is what you told them; is that correct?

A. No. No, talking about him--

Q. -- Originally, you told --

A. --I said--

Q. --you got the gun from your brother, your half brother Roscoe?

A. Yeah, Robert.

Q. Robert.

A. Robert, right.

Q. Okay, now how are you saying you got the gun from Robert is protecting Curtis? How is that protecting Curtis?

A. Because, because the harassing that the police were giving me.

Q. The police were giving Curtis?

A. Giving me.

Q. Who did you get the gun from? You know who you got it from?

A. Yeah, Ike.

Doyle Simpson - CROSS

1 Q. What is his name?

2 A. I don't know his original name. I don't know his
3 real name.

4 Q. What is his nickname?

5 A. Ike.

6 Q. Who?

7 A. Ike.

8 Q. Now you have known this guy for a long time; is
9 that correct?

10 A. Ike.

11 Q. You had known Ike for a while?

12 A. Yeah.

13 Q. In fact, y'all were friends, weren't you?

14 A. Oh, yeah.

15 Q. So I guess to paraphrase, and correct me if I'm
16 wrong, you told the police a lie about where you got the gun
17 from, not to protect Curtis but because you were being
18 harassed? Is that correct?

19 A. Right. Protect him too.

20 Q. Explain to the jury and me how it was going to
21 protect Curtis?

22 A. Because they had said I had give Curtis the gun at
23 first.

24 Q. Okay, but even if you had gotten it from Ike,
25 couldn't that still have been a possibility that you had
26 given it to Curtis? It didn't matter where you got it from,
27 or did it?

28 A. Sir? Did it matter where I got it from?

29 Q. How -- I'm trying to understand how it matters

Doyle Simpson - CROSS

1 whether you got it from Ike or from your brother.

2 A. Brother.

3 Q. Brother. I don't understand, okay, but we will
4 move on.

5 A. All right.

6 Q. Now isn't it true that you put that gun in your
7 vehicle the night before? You put the gun in your car on
8 July the 15th; is that correct?

9 A. Yeah, that's, yeah, I got it, yeah, sir.

10 Q. Was Curtis with you when you put it in your car?

11 A. No, sir.

12 Q. Well, how did Curtis know you had it in there?

13 A. Because he had knowed I had been riding before.

14 Q. Okay, now Curtis knew you had a gun; right?

15 A. Right. Right.

16 Q. But Curtis did not know that you put that gun in
17 that car that night, did he?

18 A. No.

19 Q. So he didn't know the gun was in the car? Right?

20 A. No, he did not.

21 Q. How many times did the police talk to you in all?
22 Do you have any idea?

23 A. No, I do not.

24 Q. It was a lot of them, wasn't it?

25 A. Yes.

26 Q. Was it more than one? More than one time?

27 A. Oh, yeah, more than one time, yes, sir.

28 Q. More than two?

29 A. Yeah, more than two.

Doyle Simpson - CROSS

1 Q. More than three?

2 A. It was quite a few times.

3 Q. Was it more than five?

4 A. I don't know. I know it was quite a lot because I
5 was back and forth.

6 Q. Okay. It could have been more than five, couldn't
7 it?

8 A. Yes, sir.

9 Q. Now you said Katherine Snow said she saw somebody
10 with a white cap? I didn't get the rest of it.

11 A. Yeah.

12 Q. By your car, had on a white cap and what else?

13 A. White cap, white T-shirt and a pair of shorts.

14 Q. What color shorts?

15 A. She didn't say.

16 Q. Now so you went, once you found out your gun -- to
17 be clear, you put the gun in your car on July the 15th. You
18 went to Angelica's with a loaded gun in your car?

19 A. That morning.

20 Q. And you let the windows down?

21 A. (Witness nods his head.)

22 Q. Now the parking lot at Angelica's is a big old area
23 where the employees park; is that correct?

24 A. Yes, sir.

25 Q. Now on that particular day, you went outside how
26 many times before you went to get the lunches?

27 A. What, that morning?

28 Q. That morning.

29 A. It was to get my breakfast.

Doyle Simpson - CROSS

1 Q. You went out--

2 A. Then I went back. Then I went back to let the
3 windows down.

4 Q. What time did you go out the first time?

5 A. About, between 9-- about 9:15.

6 Q. About 9:15?

7 A. Yes, sir.

8 Q. Did you check -- did you clock out at work when you
9 did that?

10 A. No. No, sir.

11 Q. You don't have to clock out for the brief moments?

12 A. Not for no break or nothing.

13 Q. Okay. How long are your breaks normally when you--

14 A. --Well, he allowed-- usually run about ten minutes,
15 but I took about 45 minutes that morning because we was back
16 in there, back there in the shop with Randy. We was talking
17 back in the shop.

18 Q. Okay. And what time did you leave the next time?

19 A. About, about 10:25 to let the windows down.

20 Q. Okay, how long were you outside that time?

21 A. About, about two minutes. I guess about, wasn't
22 even -- about a minute. It didn't take that long.

23 Q. Okay. And you didn't clock out that time either,
24 did you?

25 A. No, sir.

26 Q. So when you found out your gun was missing, you
27 told your supervisor or somebody in Angelica's; is that
28 correct?

29 A. Yes, sir.

Doyle Simpson - CROSS

1 Q. And you mentioned it to somebody at Fuzzy's?

2 A. Yes, sir.

3 Q. But you still hadn't called the police at that
4 time; is that correct?

5 A. I did not call them at all.

6 Q. You never called them; is that correct?

7 A. I never did call them.

8 Q. Okay, somebody else--

9 A. Somebody else took that up. I don't know who it
10 was.

11 Q. How many bullets did you have in that gun? Do you
12 know?

13 A. No, I do not.

14 Q. Now how is it that you have discovered it was
15 missing? Did you say earlier that your glove compartment
16 came open?

17 A. Yeah, when I closed the door got ready to leave,
18 that's when it fell open.

19 Q. Okay, on that picture, on the last picture at the
20 bottom there, is that how the glove compartment normally
21 looked, or is that after--

22 A. -- That is afterwards.

23 Q. Okay.

24 A. Yes, sir.

25 Q. Now were you surprised or shocked that your gun was
26 missing?

27 A. Yeah, shocked. I didn't know-- yeah, I was
28 shocked. I didn't know anybody had broken in my car.

29 Q. One moment. (Pause) You eventually talked to --

Doyle Simpson - CROSS

1 you eventually got back to Angelica's, and you talked to Bill
2 Thornburg and Mr. Williams; is that right?

3 A. Yes, sir.

4 Q. Now when you saw Katherine that day, Katherine Snow
5 when you got back, all she told you is what you have already
6 told us; is that correct?

7 A. Yes, sir.

8 Q. She didn't say, I saw a guy that was -- you have
9 answered that. That is okay. One moment. (Pause) Now at
10 the time the murders occurred at Tardy's, are you sure Curtis
11 was living with Connie and not his mother?

12 A. Let me see. It has been a while back.

13 Q. So you are saying you are not really sure?

14 A. I'm not really sure. I will put it like that. I
15 think it was Connie, but I'm not fur sure. I think it was
16 Connie. I can't remember.

17 Q. I think I am finished. Hold one second. (Pause)
18 Now Curtis is not the only person that knew you had a gun; is
19 that correct?

20 A. That's correct.

21 Q. So some other friends knew and relatives knew you
22 had a gun?

23 A. Yeah. My relatives, oh, yeah. All those because
24 that's where I usually hang, that's where I was hanging out
25 at, around their house. Yes, sir.

26 Q. Now you put the gun in your car that night. Did
27 you see the car -- I'm sorry, did you see the gun at all that
28 day? Did you check to make sure it was in there when you
29 left home?

Doyle Simpson - CROSS

1 A. I checked when I got to work.

2 Q. When you got to work?

3 A. Yes, sir. That's what made me lock the pocket.

4 Yes, sir.

5 Q. Okay. Did you spend a lot of time around Curtis
6 and the Campbells?

7 A. Oh, yeah.

8 Q. And Flowers?

9 A. Yeah, those are my folks.

10 Q. Didn't they do a lot of hunting? Is hunting,
11 shooting, is that kind of -- going in the woods hunting, is
12 that kind of popular in the family?

13 A. Yes, sir. Some of them, some of them hunts. Yeah,
14 some of them did.

15 Q. I think I'm finished. One second. (Pause) Isn't
16 it a fact that you -- what is your half brother's name that
17 lives in Louisiana?

18 A. Robert.

19 Q. Robert. At the time, after you told the police
20 that you had purchased the gun from Robert, didn't you make
21 some effort to reach Robert?

22 A. I did.

23 Q. By telephone?

24 A. Yes, sir. I did.

25 Q. What was that about?

26 A. About the gun and--

27 Q. What were you going to tell him?

28 A. About the, about the, about the, about Curtis.

29 Q. Isn't it a fact that you were going to tell him to

Doyle Simpson - CROSS - REDIRECT

1 say that--

2 A. --that I bought the gun from him.

3 Q. --you got the gun from him?

4 A. Right.

5 BY MR. CARTER: No further questions. Oh, one
6 minute. No further questions.

7 REDIRECT EXAMINATION BY MR. EVANS:

8 Q. Mr. Simpson, you said you were also going to tell
9 him about Curtis. What were you going to tell him about
10 Curtis?

11 A. They said, uh, that they had uh, said that I had
12 gave Curtis the gun.

13 Q. Okay, you were asked about this gun being in your
14 mother's house the night before. Where did you normally keep
15 this gun?

16 A. I usually keep it under my mattress.

17 Q. And where was it -- where all has Curtis seen you
18 with the gun?

19 A. Sir?

20 Q. Where all has Curtis seen you with the gun?

21 A. In my car.

22 Q. Did you have an occasion to find out that anyone
23 had been identified as standing by your car?

24 A. No. Say what now?

25 Q. Was there a time when you found out that somebody
26 had been identified standing by your car the morning the gun
27 was stolen?

28 A. Yeah. They said somebody like Curtis.

29 Q. All right. When did you find that out?

Doyle Simpson - REDIRECT

1 A. That's a while back.

2 Q. In relationship to the day that the gun came out,
3 when was it?

4 A. (No immediate response.)

5 Q. Was it that day, the next day?

6 A. The next day.

7 Q. The next day?

8 A. Yes, sir.

9 Q. Was it before or after that that you told the
10 police the story about where the gun came from?

11 A. That was, let me see. That was after that.

12 BY MR. EVANS: That's all we have of this
13 witness, Your Honor.

14 BY THE COURT: Is he finally excused?

15 BY MR. EVANS: Yes, sir.

16 BY THE COURT: You are free to go, Mr. Simpson.

17 WITNESS EXCUSED.

18 BY THE COURT: Who do you have next?

19 BY MR. EVANS: If she is back there yet, Clemmie
20 Fleming.

21 BY MR. CARTER: Who?

22 BY THE COURT: Clemmie Fleming. She hasn't been
23 sworn either, has she?

24 BY MR. EVANS: No, sir. Let me check in case she
25 is not, to see who is.

26 (Mr. Evans leaves the courtroom briefly.)

27 BY MR. EVANS: Sherry Bailey, Your Honor.

28 (A Sheriff's Deputy enters the courtroom and
29 approaches Mr. Evans.)

Elaine Gholston - DIRECT

1 BY DEPUTY: Elaine is here now.

2 BY MR. EVANS: Yeah, if she is here, I would
3 rather go ahead and put her on next.

4 BY MR. CARTER: Who was that?

5 BY MR. EVANS: Elaine Gholston.

6 BY THE COURT: Who do you want?

7 BY MR. EVANS: Elaine Gholston if she is here.

8 ELAINE GHOLSTON,

9 a black female called to testify as a witness by the State of
10 Mississippi, having first been duly sworn, testified as
11 follows, to-wit:

12 BY THE COURT: State your name.

13 BY THE WITNESS: Elaine Gholston.

14 BY MR. EVANS: May I proceed, Your Honor?

15 BY THE COURT: Uh-hum.

16 DIRECT EXAMINATION BY MR. EVANS:

17 Q. Good evening, Ms. Gholston. Ms. Gholston, I want
18 to direct your attention back to 1996. Do you remember the
19 time of the Tardy murders here?

20 A. (Witness nods her head.) Yes, I do.

21 Q. Where were you living at that time?

22 A. 703 B McNutt Drive

23 Q. 703 B McNutt?

24 A. (Witness nods her head.)

25 Q. Do you know Curtis Flowers?

26 A. Yes, I do.

27 Q. Where was he living at that time?

28 A. Across the street.

29 Q. And who was he living with?

Elaine Gholston - DIRECT - CROSS

1 A. Connie Moore.

2 Q. Ms. Gholston, did you have an occasion to see
3 Curtis Flowers on the morning of the murders?

4 A. Yes, I did.

5 Q. What was the first time you saw him that day?

6 A. On the porch smoking a cigarette when I was getting
7 ready to go to work.

8 Q. And what time did you see him on the porch?

9 A. Around about 6:30, something to 7:00.

10 Q. Ms. Gholston, do you know what type of shoes he was
11 wearing at that time?

12 A. Some Grant Hill Filas.

13 Q. Was that a pretty popular name brand shoe during
14 that time?

15 A. It was.

16 Q. After you saw him smoking a cigarette on the porch
17 about 6:30 or something to 7:00, did you have an occasion to
18 see him any more that day?

19 A. No, I didn't.

20 BY MR. EVANS: Your Honor, I will tender this
21 witness.

22 CROSS-EXAMINATION BY MR. CARTER:

23 Q. Good afternoon, Ms. Gholston. I'm Ray Carter.

24 A. How are you?

25 Q. How long have you known Curtis Flowers?

26 A. About seven to eight years.

27 Q. Seven or eight years. Has he worn Grant Hill Filas
28 the whole time? Has he worn Grant Hill Filas the whole seven
29 years?

Elaine Gholston - CROSS

1 A. (Witness shakes her head.) No.

2 Q. What else has he worn?

3 A. I don't remember; just that particular pair.

4 Q. Where was he at the first time you saw him with
5 that pair on?

6 A. At his house.

7 Q. Okay, so are you friends with him? You visit him a
8 lot?

9 A. No, I didn't.

10 Q. What made you notice what kind of shoes he had on?

11 A. Because everyone was wearing them. They was
12 popular.

13 Q. Because everyone was wearing them?

14 A. You know, most of the people, the guys was wearing
15 them when they first came out.

16 Q. Did Connie's children have Grant Hill Filas?

17 A. I don't, I can't remember.

18 Q. Who else you know had some?

19 A. Just guys, you know. I just seen them. I just
20 seen guys wear them.

21 Q. Okay, so what color were they?

22 A. Red, white and blue.

23 Q. Which color was the dominant color?

24 A. I can't remember.

25 Q. Where was the red located on the shoe?

26 A. If I'm not mistaken, on the side.

27 Q. Where was the blue located?

28 A. It has been a while since I seen them.

29 Q. Where was the white located?

Elaine Gholston - CROSS

1 A. The majority of it was white.

2 Q. Okay. What was Curtis Flowers doing when you saw
3 him with the shoes on?

4 A. He was outside.

5 Q. He was outside?

6 A. Outside.

7 Q. Okay, outside where?

8 A. Outside in the yard.

9 Q. Okay. Now they had a lot of different kinds of
10 Grant Hill shoes back at that time?

11 A. Uh-hum.

12 Q. Were these Grant Hill II's or Grant Hill I's, or
13 they had more than one style of Grant Hills back out at that
14 time? Isn't that a fact?

15 A. I don't know. I just remember them particular
16 pair. I don't know.

17 Q. How many times have you talked to the police?

18 A. Probably two or three times.

19 Q. Who talked to you?

20 A. John Johnson.

21 Q. He talked to you all three times?

22 A. (Witness nods her head.)

23 Q. When was the first time he talked to you?

24 A. When it first, you know, happened; when everything
25 was going down.

26 Q. Okay, so he talked to you right around -- now the
27 incident happened on July 16, 1996. So did--

28 A. -- He probably waited about a week after.

29 Q. About a week after?

Elaine Gholston - CROSS

1 A. (Witness nods her head.)

2 Q. Did he tape you?

3 A. Yeah, I think he did. He did.

4 Q. Okay. Did you write out a statement in your own
5 handwriting?

6 A. No, I didn't.

7 Q. Did you sign a statement?

8 A. I can't remember.

9 Q. That somebody else wrote?

10 A. I can't remember.

11 Q. Did you read a statement that John Johnson wrote?
12 Did he write out a statement and say--

13 A. Yes.

14 Q. --Ms. Gholston, read this and tell me if you agree
15 with it?

16 A. Yeah, I think I did.

17 Q. So you read it, but did you sign it?

18 A. I don't remember signing it. I might have did, but
19 I just don't remember.

20 Q. What kind of clothing did Curtis have on at the
21 time?

22 A. At the time of what?

23 Q. When you saw him that morning.

24 A. Uh, I want to say a blue T-shirt. I think it was
25 some shorts, blue or black shorts.

26 Q. How many times did you see Curtis with Grant Hill
27 Filas on?

28 A. I can remember seeing him one time.

29 Q. One time. Give me some idea if you can how many

Elaine Gholston - CROSS

1 other people you saw when wearing Grant Hill--

2 A. -- I seen a lot of little boys wearing them. You
3 know, little young boys.

4 Q. You have any kids?

5 A. Yes, I do.

6 Q. Did your kids have any?

7 A. I have a daughter.

8 Q. Oh, I'm sorry.

9 A. No, she didn't.

10 Q. You don't have a son?

11 A. No, I don't.

12 Q. Now what time did you go to work that morning?

13 A. I have to be at work at 7:00.

14 Q. At 7:00. Do you know Patricia Hallmon?

15 A. Uh-hum.

16 Q. Where do you live now?

17 A. I live in Duck Hill.

18 Q. So you had to be at work at 7:00, so what time did
19 you leave?

20 A. I left about 15 till.

21 Q. Do you recall seeing Patricia Hallmon walking or
22 jogging the neighborhood back around that time?

23 A. No, I don't.

24 Q. Have you ever seen her walking or jogging early in
25 the morning around 6:00 to 7:00?

26 A. No, I haven't.

27 Q. Now you talked to the police more than one time.
28 And he taped you one time, you believe?

29 A. Uh-hum.

Elaine Gholston - CROSS

1 Q. And did he get any kind of statement from you the
2 other times? Did he get a written statement or a taped
3 statement any other time, other than the one time you
4 mentioned you are thinking he might have?

5 A. No, not that I can remember.

6 Q. Tell me the condition of Curtis or the Grant Hill
7 Filas that you supposedly saw him in?

8 A. The condition what?

9 Q. What kind of condition were they in?

10 A. They looked like they had been worn a couple of
11 times.

12 Q. Just a couple of times? Were they, still looked
13 like they were new?

14 A. Yeah.

15 Q. Did you tell the police that?

16 A. I don't remember. I don't know.

17 Q. Now if I told you that John Johnson's report showed
18 August the 11th, 1996, as the date he talked to you, would
19 that be wrong? Could you dispute that?

20 A. No, I couldn't.

21 Q. Now when you saw Curtis wearing Grant Hill Filas,
22 when was that? What month, what year?

23 A. I don't remember.

24 Q. You have no idea when it was?

25 A. It had to have been in that same year when he asked
26 me that question.

27 Q. So when Mr. Johnson asked you the question--

28 A. Uh-hum.

29 Q. --it had to be in the same year?

Elaine Gholston - CROSS

1 A. Uh-hum.

2 Q. But did he ask you when you saw him in the shoes?

3 A. I believe he did, but I can't -- I know he did, but
4 I can't remember what day it was.

5 Q. You can't remember what month it was?

6 A. No, I can't.

7 Q. Now you didn't see Curtis wearing any Grant Hill
8 Fila shoes around the time of the murders; is that correct?

9 A. No, I didn't.

10 Q. Hum?

11 A. No, I didn't.

12 Q. So if you had -- when you saw Curtis wearing Grant
13 Hill shoes, it was a long time before the murders occurred,
14 wasn't it?

15 A. Probably could have been.

16 Q. Tell me how Curtis wore his Grant Hill Filas.

17 A. How he wore them?

18 Q. You know, people wear tennis shoes different,
19 different ways these days.

20 A. What, tied up, untied, or what are you saying?

21 Q. Describe how they were pushed, positioned on his
22 feet, tied or untied or just what?

23 A. I just, I don't know.

24 Q. What was it that made -- isn't it kind of --
25 wouldn't you agree that it's not normal to just look at
26 somebody's feet without a reason?

27 A. Well, you know, when you are just looking at a
28 person and you notice the new tennis shoes out, you are going
29 to see, you know.

Elaine Gholston - CROSS

1 Q. Okay. So the day that Curtis had the new tennis
2 shoes on, what kind of pants did he have on?

3 A. I want to say some blue jeans.

4 Q. Are you sure?

5 A. I'm not sure, but that's what I want to, you know.

6 Q. What kind of shirt did he have on?

7 A. I don't know.

8 Q. Did he have a cap on?

9 A. I don't think so.

10 Q. What was the season when you saw him with the Grant
11 Hill tennis shoes on? Was it hot or cold or?

12 A. It was probably like in the-- like cool. I would
13 say in the spring time.

14 Q. Okay. Can you tell me what other type of shoes you
15 saw Mr. Flowers wearing since you had known him for like
16 seven years?

17 A. Just no particular one.

18 Q. Okay, did you hear about a reward being out, a
19 monetary award for information about the people at Tardy's?

20 A. No.

21 Q. You never heard about it?

22 A. Uh-uh.

23 Q. Do you remember talking to a gentleman by the name
24 of Chokwe Lumumba?

25 A. Yes, I do.

26 Q. And he asked you when was it that you saw
27 Mr. Flowers in Grant Hill shoes, and isn't it true that you
28 said months and months before the incident?

29 A. Months and months. I probably did.

Gholston - REDIRECT Bailey - DIRECT

1 BY MR. CARTER: One moment. I think I'm about
2 finished. One moment.

3 (Defense Counsel confer.)

4 BY MR. CARTER: We tender.

5 REDIRECT EXAMINATION BY MR. EVANS:

6 Q. Ms. Gholston, real briefly, whether it was a month
7 or two months before the murders, you do know that the
8 Defendant wore Fila Grant Hill tennis shoes; is that correct?

9 A. Yes, sir.

10 BY MR. EVANS: Nothing further.

11 BY THE COURT: Is she finally excused?

12 BY MR. EVANS: Yes, sir.

13 BY MR. CARTER: Yes, sir.

14 BY THE COURT: You are free to go, ma'am.

15 WITNESS EXCUSED.

16 BY THE COURT: Who do you have next?

17 BY MR. EVANS: Sherry Bailey.

18 SHERRY BAILEY,

19 a white female called to testify as a witness by the State of
20 Mississippi, having first been duly sworn, testified as
21 follows, to-wit:

22 BY THE COURT: State your name, please.

23 BY THE WITNESS: Sherry Bailey.

24 BY THE COURT: Talk up, Ms. Bailey so they can
25 hear you.

26 BY THE WITNESS: Sherry Bailey.

27 DIRECT EXAMINATION BY MR. EVANS:

28 Q. Good evening, Ms. Bailey. How are you employed?

29 A. Well, I'm a real estate broker. I'm not really

Gholston - REDIRECT Bailey - DIRECT

1 BY MR. CARTER: One moment. I think I'm about
2 finished. One moment.

3 (defense Counsel confer.)

4 BY MR. CARTER: We tender.

5 REDIRECT EXAMINATION BY MR. EVANS:

6 Q. Ms. Gholston, real briefly, whether it was a month
7 or two months before the murders, you do know that the
8 Defendant wore Fila Grant Hill tennis shoes; is that correct?

9 A. Yes, sir.

10 BY MR. EVANS: Nothing further.

11 BY THE COURT: Is she finally excused?

12 BY MR. EVANS: Yes, sir.

13 BY MR. CARTER: Yes, sir.

14 BY THE COURT: You are free to go, ma'am.

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18 SHERRY BAILEY,

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20 Mississippi, having first been duly sworn, testified as
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22 BY THE COURT: State your name, please.

23 BY THE WITNESS: Sherry Bailey.

24 BY THE COURT: Talk up, Ms. Bailey so they can
25 hear you.

26 BY THE WITNESS: Sherry Bailey.

27 DIRECT EXAMINATION BY MR. EVANS:

28 Q. Good evening, Ms. Bailey. How are you employed?

29 A. Well, I'm a real estate broker. I'm not really

Sherry Bailey - DIRECT

employed every day.

Q. All right. I want to direct your attention back to 1996, and I will ask you how you were employed at that time?

A. I was working for Union Planters Bank.

Q. In what capacity?

A. Teller.

Q. Do you remember the morning of the murders?

A. I do.

Q. Did you have an occasion on that morning to see Carmen Rigby?

A. I did.

Q. Do you know what time?

A. The drive-thru opens up at 8:30. It was maybe just a little bit after that because there was, there were three cars, and she was in between.

Q. Okay. And what was she doing at that time?

A. Picking up her bank bag that she deposited.

(Mr. Evans shows items to Mr. Carter.)

BY MR. EVANS:

Q. Ms. Bailey, I want to hand you Exhibit 36 for identification, and I will ask you if you would, to examine this gray Sunburst Bank money bag and the contents of it and see if you can identify it?

A. Yes. Here is my stamp. That's where I stamped it.

Q. Can you identify what that is?

A. This is a night deposit. They leave it, you know, put it in the little shoot after hours, and they come back and pick it up. Sometimes cash in them, sometimes not.

Q. And whose night deposit is that?

Sherry Bailey - DIRECT

1 A. This is Tardy Furniture Company.

2 BY MR. EVANS: Your Honor, I offer this exhibit
3 into evidence as a composite exhibit.

4 BY MR. CARTER: No objection.

5 BY THE COURT: Let it be marked as a composite
6 exhibit. That is the bag and the contents; right?

7 BY MR. EVANS: Yes, sir.

8 (GRAY MONEY BAG CONTAINING RECEIPT BOOK PREVIOUSLY
9 MARKED AS STATE'S EXHIBIT S-36 FOR IDENTIFICATION WAS NOW
10 RECEIVED IN EVIDENCE.)

11 BY MR. EVANS:

12 Q. All right, Ms. Bailey, I want to hand you the
13 deposit book back, and I will ask you if you will, if you
14 will refer to any deposits slips that you had anything to do
15 with on July the 16th, 1996?

16 A. Okay, this is the one that is dated with my stamp
17 on the 16th where she had deposited -- she has got the date
18 of 7/15, so that was the night before, the day before.

19 Q. And you stamped it on the 16th?

20 A. Yes, sir.

21 Q. At what time, or does it show?

22 A. It doesn't have a time, but it would have to be
23 right after 8:30 because that's when we got the bags out of
24 the night drop and worked those before 9:00.

25 Q. Okay. And procedurally, how does that work? When
26 she arrived at the bank that morning, what did she do?

27 A. Just pulls up to the window and knows and asks for
28 her bank bag, and we hand her her bag. And whatever is in it
29 has been worked or you know, with every-- all of this in it.

Sherry Bailey - DIRECT

1 Q. Okay. And approximately what time did she stop by
2 and pick the bank bag up that morning?

3 A. The window opens at 8:30. 8:30 to 8:35 or 40.

4 Q. All right.

5 BY MR. EVANS: Tender this witness, Your Honor.

6 BY MR. CARTER: No questions. Have a good day.
7 Hold on one minute. No questions.

8 BY THE COURT: Ms. Bailey, you are -- she is
9 finally excused, isn't she?

10 BY MR. EVANS: Yes, sir.

11 BY THE COURT: You are free to go, ma'am.

12 WITNESS EXCUSED.

13 BY THE COURT: Who will you have next?

14 BY MR. EVANS: Jack Matthews.

15 BY MR. CARTER: Your Honor, could we get a break
16 because that's going to be a long one, probably an
17 hour or two.

18 BY THE COURT: We will take -- about what?

19 BY MR. CARTER: I'm assuming it is going to take
20 at least an hour for him.

21 BY THE COURT: Okay. We will take a short break.

22 (FOLLOWING THE AFTERNOON RECESS ON FEBRUARY 7,
23 2004, ALL COUNSEL, THE DEFENDANT AND THE JURY RETURNED TO THE
24 COURTROOM FOR THE FOLLOWING:)

25 BY THE COURT: Ladies and gentlemen, the next few
26 witnesses are going to be lengthy, and so I decided we
27 have reached a stopping point here in the middle of
28 the afternoon. It is also -- y'all have been at this
29 for six days now. It has been a long week for

Court recessed for the night

1 everybody. So we are going to break for the weekend,
2 and we are going to start back Monday at 9 o'clock. I
3 let you go with the same instructions that we have had
4 all along. You are still not to form any opinions
5 about this matter because you have not heard all the
6 evidence nor do you have my instructions on the law.
7 And you must not talk about the case amongst
8 yourselves until such time as I tell you that you can.
9 The bailiffs have got good instructions from me on how
10 to take care of you. If they don't do right, you let
11 me know. Okay, I will see y'all Monday morning.

12 (TRIAL WAS RECESSED FOR THE DAY ON FEBRUARY 7,
13 2004, AT 3:04 PM.)

Mary Jeanette Fleming - DIRECT

(ON FEBRUARY 9, 2004, COURT WAS OPENED WITH ALL
COUNSEL AND THE DEFENDANT PRESENT.)

BY THE COURT: Who will you have first?

BY MR. EVANS: Mary Jeanette Fleming.

JURY ENTERS THE COURTROOM.

MARY JEANETTE FLEMING,

a black female called to testify as a witness by the State of
Mississippi, having first been duly sworn, testified as
follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Mary Jeanette Fleming.

DIRECT EXAMINATION BY MR. EVANS:

Q. Good morning, Ms. Fleming.

A. Good morning.

Q. Ms. Fleming, I want to direct your attention back
to July the 16th, 1996, the morning that the four people were
killed at Tardy Furniture here in Winona. Do you remember
that morning?

A. Yes, sir.

Q. Did you have an occasion to take your car anywhere
that morning?

A. I took it to Weed Brothers.

Q. Why did you take your car to Weed Brothers?

A. To get a windshield put in it.

Q. And in relationship to Tardy Furniture, where is
Weed Brothers located?

A. Behind Tardy's.

Q. Do you know what time you carried your car in?

A. Ten minutes to 9:00.

Mary Jeanette Fleming - DIRECT

1 Q. All right, was that the time you left your house or
2 the time you got to Weed Brothers?

3 A. The time I left my house.

4 Q. Can you tell us about how long it took you to get
5 to Weed Brothers?

6 A. Probably about five or ten minutes.

7 Q. All right, after you got to Weed Brothers, what did
8 you do there?

9 A. I dropped my, I told them I brought my car to them
10 because I already had called them, and they was waiting on
11 me. And when I took it, I told him he would go to the car,
12 so I got out, and I started walking back home.

13 Q. And what direction did you walk home?

14 A. I come off of Carrollton Avenue. I got on Church
15 Street. Then I entered Campbell Street.

16 Q. Okay, so you turned, from Weed Brothers you went on
17 Carrollton Avenue to Church and then to Campbell?

18 A. Yes, sir.

19 Q. Do you know Curtis Flowers?

20 A. Yes, sir.

21 Q. Did you have an occasion to see him the morning of
22 the murders at Tardy Furniture?

23 A. Yes, sir.

24 Q. Where do you see him?

25 A. I seen him on Campbell Street just as I turned and
26 was walking. I met him.

27 Q. Whereabouts on Campbell Street was he?

28 A. He was almost in the end of Church Street. It was
29 about, not far from Church Street by Glendale Edwards' house.

Mary Jeanette Fleming - DIRECT

1 Q. By Glendale who's house?

2 A. Edwards.

3 Q. Edwards. So he was on Campbell almost at Church?

4 A. Yes, sir.

5 Q. Which direction was he walking?

6 A. He was headed towards town.

7 Q. Did y'all have any conversation?

8 A. Only thing, he spoke and I spoke back.

9 Q. What did he say?

10 A. He told me, "Hi, good looking," and I spoke, and he
11 went on, and I went on about my business. Where he went, I
12 don't know.

13 Q. How long had you known him at that time?

14 A. I had known him since he had got grown, he's grown
15 up.

16 Q. Okay, about how many years?

17 A. About ten.

18 Q. About how long did it take you to walk from Weed
19 Brothers to where you saw him at--

20 A. It took about a few minutes.

21 Q. A few minutes?

22 A. Yes, sir, three or four minutes.

23 Q. Okay, after you saw the Defendant Curtis Flowers,
24 which direction did you go then?

25 A. I kept going. I stopped by a friend's house first.
26 Then after I stopped and talked with her, I went on home.

27 Q. All right. On Campbell Street after you saw the
28 Defendant -- well, let me ask you this. Do you know a lady
29 by the name of Ms. Beneva Henry?

Mary Jeanette Fleming - DIRECT - CROSS

1 A. Yes, sir.

2 Q. Did you have an occasion to walk by her house after
3 you saw the Defendant?

4 A. Yes, sir.

5 Q. Did you see her that morning?

6 A. Yes, sir.

7 Q. Where was she and what was she doing at that time?

8 A. Sitting on her porch.

9 BY MR. EVANS: Your Honor, I will tender this
10 witness.

11 BY MR. CARTER: One moment.

12 CROSS-EXAMINATION BY MR. CARTER:

13 Q. Good morning, Ms. Fleming. My name is Ray Carter.

14 A. Good morning.

15 Q. How much did you pay for your windshield?

16 A. 275.

17 Q. With tax included?

18 A. It was 275. I guess.

19 Q. And you got that windshield from Weed Brothers?

20 A. Yes, sir.

21 BY MR. CARTER: May I approach the witness, Your
22 Honor?

23 BY THE COURT: Uh-hum.

24 BY MR. CARTER:

25 Q. Can you look at that and tell me what it is?

26 A. It's 374.

27 Q. So you didn't pay 275; you paid 374. Is that
28 correct?

29 A. Well, I thought it was 275. That's what they told

Mary Jeanette Fleming - CROSS

me.

Q. And what I just showed you was the estimate and repair order from Weed Brothers; is that correct?

A. (Witness nods her head.)

Q. Okay, you took your car there on July the 16th, 1996; is that correct?

A. Yes, sir.

Q. When did you pick it up?

A. I picked it up, I picked it up the weekend, like Friday or Saturday because it stayed there from Tuesday until Friday. Okay, Friday. That Friday evening after I got off work from Steel of Pearl, I got paid, and I went and picked it up then.

Q. When you went to Weed Brothers, did you fill out any papers or sign any documents?

A. No.

Q. Now does Weed Brothers still exist at that same location?

A. Yes, sir.

Q. Now how did you get to Weed Brothers?

A. How do I--

Q. -- What kind of route?

A. Sir?

Q. What route did you travel to get to Weed Brothers?

A. I left off of Freedman Street and went straight down Campbell Street. Then I turned and went on Church Street, and I went on Carrollton Avenue, and I took it to Weed Brothers.

Q. Okay. As I understand, Weed Brothers' layout,

Mary Jeanette Fleming - CROSS

1 there is a front and a back part of it. Where did you park
2 exactly?

3 A. At the back.

4 Q. And that would be that street that runs between,
5 behind Tardy's and in front of Weed Brothers?

6 A. Yes, sir.

7 Q. And did you pull into the parking area there for
8 Weed Brothers, or did you--

9 A. -- yes, sir.

10 Q. You did? And you left, walked -- did you go inside
11 of Weed Brothers?

12 A. No.

13 Q. Somebody met you?

14 A. Ken. Yes, sir, and he got the car, and I told them
15 I brought my car, and I had parked it. He took it, and I
16 started back walking home.

17 Q. Okay, what street did you take?

18 A. Um, I went to Carrollton Avenue, got on Church
19 Street. Then I went to Campbell.

20 Q. Now what is the name of that friend that you, whose
21 house you went to?

22 A. Her name is Carlean Green.

23 Q. Carlean Green?

24 A. Yes, sir.

25 Q. How long did you stay there?

26 A. About 20 minutes.

27 Q. Now what time did you see Ms. Powell -- not
28 Ms. Powell -- Ms. Henry? I'm sorry.

29 A. I seen her after, when I was walking back.

Mary Jeanette Fleming - CROSS

1 Q. Okay. So you got your car at Weed Brothers. Was
2 it exactly 9:00 or five or ten minutes to 9:00 or what?

3 A. Say what now?

4 Q. What time exactly did you take the car to Weed
5 Brothers, if you remember?

6 A. Well, I left from home at ten minutes to 9:00.

7 Q. And it took you about ten minutes to get there, I
8 believe you said; right?

9 A. Yes, sir.

10 Q. You live at -- at that time you lived right behind
11 Piggly Wiggly; is that right?

12 A. Yes, sir.

13 Q. How far is Campbell and Church from Tardy's?

14 A. How far is Campbell and Church from Tardy's?

15 Q. From Tardy's Furniture.

16 A. It just right around the corner.

17 Q. Is it a football field?

18 A. No.

19 Q. Half a football field?

20 A. I don't know my distance. I guess so.

21 Q. Okay. When you saw Mr. Flowers, what did he have
22 on?

23 A. Brown pants, white shirt, and a gray jacket.

24 Q. Brown pants, white shirt, and a gray jacket. Now
25 isn't it a fact that you have given a different description
26 than that before?

27 A. I can't recall, but I knew I seen him with some
28 pants on and a white shirt, and he had a gray jacket on
29 because the logo was on both of the shoulders, and it might

Mary Jeanette Fleming - CROSS

1 have been gray.

2 Q. Who did you talk to about this case? Who in the
3 police department interviewed you?

4 A. Johnny Hargrove.

5 Q. I'm sorry?

6 A. Who interviewed me like what?

7 Q. Concerning what you saw. Someone from Mr. Evans'
8 office or associated with Mr. Evans or associated with the
9 police department or Mississippi Highway Patrol questioned
10 you concerning what you saw; is that correct?

11 A. Yes, sir.

12 Q. How many times were you questioned?

13 A. I think once.

14 Q. Who talked to you?

15 A. John Johnson.

16 Q. And where were you when this conversation took
17 place?

18 A. I can't remember.

19 Q. Now isn't it a fact that at the police department
20 Master Sergeant Jack Matthews interviewed you with Winona
21 Police Chief Johnny Hargrove present?

22 A. Sir?

23 Q. Isn't it a fact that it was Sergeant, Master
24 Sergeant Jack Matthews who interviewed you?

25 A. Johnny Hargrove interviewed me, I think. Johnny
26 Hargrove.

27 Q. Okay, Johnny Hargrove. Did John Johnson interview
28 you also?

29 A. Well, he didn't interview me. He just -- I showed

Mary Jeanette Fleming - CROSS

1 him where I seen Mr. Flowers at.

2 Q. Okay, now when did you show this to John Johnson?

3 A. I can't remember, but I remember showing him.

4 Q. And your complete name is Mary Jeanette Fleming; is
5 that correct?

6 A. Yes.

7 Q. Now isn't it a fact that you were interviewed on
8 February 13, 1997?

9 A. Yes, sir. I told you I couldn't remember.

10 Q. Now they interviewed you about six months after
11 this happened; is that correct?

12 A. I think so.

13 Q. Do you read your newspapers?

14 A. Do I read the newspaper?

15 Q. Were you reading the newspaper back in, around the
16 time that this incident at Tardy's happened?

17 A. Yes, sir.

18 Q. And did you watch the news back at that time, TV
19 news?

20 A. Yes, sir.

21 Q. Did you ever see the mentioning of a monetary
22 reward on the news for information leading to the murders at
23 Tardy's?

24 A. No, I don't -- no.

25 Q. Did you see any notices of rewards posted in any
26 stores anywhere?

27 A. I think I seen some posted.

28 Q. Okay.

29 BY MR. CARTER: May I approach the witness, Your

Mary Jeanette Fleming - CROSS

1 Honor?

2 BY THE COURT: Yes.

3 BY MR. CARTER:

4 Q. Look at this, Ms. Mary Jeanette Fleming, and tell
5 me whether you can identify what that is. (Pause) Read the
6 heading and tell me what it says.

7 A. Right here?

8 Q. Right here. Start with the first line.

9 A. You want me to read it aloud?

10 BY MR. EVANS: Your Honor, if we are going to
11 read different articles, they have got to be in
12 evidence.

13 BY THE COURT: First, they need to be marked for
14 identification. Then she has got to identify it.
15 Then I have got some basis to rule. She can't read
16 from it until I do that.

17 BY MR. CARTER: Would you mark this for
18 identification, please.

19 (INTERVIEW WITH MARY JEANETTE FLEMING WAS MARKED AS
20 DEFENDANT'S EXHIBIT D-1 FOR IDENTIFICATION.)

21 BY MR. CARTER:

22 Q. I pass this back to you and I ask you to pay
23 particular attention to like the first 15 lines, starting at
24 the top.

25 BY THE COURT: She has got to identify it first,
26 Mr. Carter.

27 BY MR. CARTER: Sir?

28 BY THE COURT: She has to identify it before she
29 can testify to it.

Mary Jeanette Fleming - CROSS

BY MR. CARTER:

Q. Would you read -- take a look at that and identify it for me?

A. Read it loud or to myself?

BY THE COURT: No, ma'am.

BY MR. CARTER:

Q. No, look at it to yourself first, and let me know whether you recognize what it is. Then I have some questions for you.

A. Do you want me to read this too?

Q. No, you just, at whatever point -- at this point based on what you have read so far, do you know what that is?

A. (Witness shakes her head.)

BY THE COURT: You have to answer out loud, ma'am.

BY THE WITNESS:

A. No, I don't think. No.

BY THE COURT: Okay.

BY MR. CARTER:

Q. Now Ms. Fleming, the document I just asked you about, it reads Interview--

BY MR. EVANS: -- Your Honor, I object to him reading from a document until he gets it introduced into evidence.

BY MR. CARTER: This does not have to be introduced, Your Honor, for me to read it, read from it and ask questions about it.

BY THE COURT: It has got to be, you have got to have some identification of it for it to be relevant.

Mary Jeanette Fleming - CROSS

BY MR. CARTER:

Q. Ms. Fleming, you gave a statement to somebody at the police department and you know that Mr. Hargrove was there; is that correct?

A. Yes, sir.

Q. And was a tape recorder running?

A. I don't know, sir. I can't even, I can't remember if it was. I didn't see it.

Q. Did you sign a statement?

A. No.

Q. But you know you gave a statement?

A. Yes, sir.

Q. Is that correct?

A. (Witness nods her head.)

Q. And you know you gave a description of what Curtis Flowers was wearing when you saw him; is that correct?

A. Yes, sir.

Q. Can you dispute that you told the police that Mr. Flowers had on some black pants, a white shirt and a jacket purple like all over. Can you dispute that? Can you deny that?

A. The jacket wasn't purple all over. It was gray and purple on the shoulders. It was not purple all over. So I didn't say that.

Q. Did you tell the police that he had on black pants?

A. Yes, sir. I think so.

Q. Well, you just said--

A. He had on, he didn't have on no black pants.

Q. He didn't have on black pants?

Mary Jeanette Fleming - CROSS

1 A. (Witness shakes her head.)

2 BY MR. CARTER: One moment, Your Honor.

3 (Defense Counsel confer.)

4 BY MR. CARTER:

5 Q. Now Ms. Jeanette, you don't actually know where
6 Curtis Flowers went that morning; is that correct?

7 A. No, I didn't say I know where he went. All I say,
8 I seen the Defendant walking, and God is my witness, and
9 Curtis know I seen him walking.

10 Q. Okay. I'm just asking if you know where he went.
11 You didn't actually see him go into Tardy's; is that correct?

12 A. No, I didn't.

13 Q. Now isn't it a fact that Campbell and Church is
14 like a couple of blocks, a couple of blocks from Tardy's?

15 A. Yes. Campbell is, we was almost at the end of
16 Campbell Street. It wasn't that far from Tardy's.

17 Q. Okay. One moment. (Pause) Now was Mr. Flowers
18 dressed like he was dressed up or not, or do you know?

19 A. Yes, sir.

20 Q. Now the State -- do you remember as best you can --
21 strike that. I think I have asked it before. Now when you
22 saw Mr. Flowers, he was perfectly calm and normal; is that
23 correct?

24 A. Yes, sir.

25 Q. Now you didn't, did Mr. Flowers have on a cap?

26 A. No.

27 Q. What kind of shoes did he have on?

28 A. I didn't pay any attention to the shoes.

29 Q. Now Clemmie Fleming, do you know her?

Mary Jeanette Fleming - CROSS

1 A. That is my niece. Why?

2 BY THE COURT: Well, you can't ask questions,
3 ma'am.

4 BY MR. CARTER:

5 Q. Now it was hot back in July on that day; is that
6 correct?

7 A. Uh-huh.

8 Q. But your testimony is that Mr. Flowers had on a
9 sweater?

10 A. I didn't say a sweater. A light jacket.

11 Q. Okay. Was it like a suit jacket like this?

12 A. No, it was like a windbreaker jacket.

13 Q. Okay.

14 A. Maybe he wasn't hot.

15 Q. When did you find out about the murders, Ms.
16 Fleming?

17 A. The same day, later on.

18 Q. How late?

19 A. Like around 1:00 or 2:00. Well, I found out, I
20 found out about it that same morning because when I was
21 headed home, a lady come out of Piggly Wiggly, and she told
22 me that it was a murder at Tardy's. I found out that
23 morning.

24 Q. Found out that morning?

25 A. Yes, sir.

26 Q. About what time that morning?

27 A. Probably about 10:30. 10:30 or 11:00, something
28 like that.

29 BY MR. CARTER: One moment. I think I might be

Mary Jeanette Fleming - REDIRECT

1 finished.

2 (Defense Counsel confer.)

3 BY MR. CARTER: No further questions.

4 REDIRECT EXAMINATION BY MR. EVANS:

5 Q. Ms. Fleming, very briefly. Where did you see this
6 Defendant on the morning of the murders at Tardy Furniture?

7 A. I seen him walking down Campbell Street.

8 Q. And which direction was he headed?

9 A. In the town direction, headed towards town.

10 Q. And just for the record, do you see the person in
11 the courtroom that you saw walking--

12 A. -- Sitting right there.

13 BY MR. EVANS: May the record reflect that she
14 has identified--

15 BY THE WITNESS:

16 A. -- Uh-huh. There he sit right there.

17 BY MR. EVANS: --the Defendant?

18 BY THE COURT: Let the record reflect that.

19 BY MR. EVANS: Nothing further of this witness,
20 Your Honor.

21 BY THE COURT: Is she finally excused?

22 BY MR. EVANS: Yes, sir.

23 BY THE COURT: Ms. Fleming, you are free to go.

24 WITNESS EXCUSED.

25 BY THE COURT: Who will you have next?

26 BY MR. EVANS: Clemmie Fleming.

27 (Witness enters the courtroom.)

28 BY THE COURT: Ms. Fleming, come around and have
29 a seat over here.

Clemmie Fleming - DIRECT

1 CLEMMIE FLEMING,

2 a black female called to testify as a witness by the State of
3 Mississippi, having first been duly sworn, testified as
4 follows, to-wit:

5 BY THE COURT: State your name, please.

6 BY THE WITNESS: Clemmie Fleming.

7 BY MR. EVANS: May I proceed, Your Honor?

8 BY THE COURT: Yes.

9 DIRECT EXAMINATION BY MR. EVANS:

10 Q. Good morning, Ms. Fleming.

11 A. Good morning.

12 Q. Ms. Fleming, I want you to speak loud so that
13 everybody over here in the jury can hear you; okay?

14 A. (Witness nods her head.)

15 Q. Do you remember the morning in July, July the 16th,
16 1996, where the four people were killed at Tardy's Furniture?

17 A. Yes, sir.

18 Q. Did you have an occasion to go to town that
19 morning?

20 A. Yes, sir.

21 Q. Tell the ladies and gentlemen of the jury why you
22 went to town that morning and about what time?

23 A. Because Ms. Tardy had kept calling my house, and I
24 supposed to be the one to pay on, you know, pay on my
25 furniture that morning. And I was pregnant, and I didn't
26 feel like getting out. So we had pulled up there in front of
27 Tardy's, and then I didn't get out. I told him to go in.
28 And the man I was with, he didn't get out. So we left.

29 Q. Who did you get to carry you to Tardy Furniture?

Clemmie Fleming - DIRECT

1 A. Roy Harris.

2 Q. And you were going there to pay on a furniture
3 bill?

4 A. Yes, sir.

5 Q. And why did you not get out?

6 A. I didn't feel like it.

7 Q. Okay, but I don't know -- I couldn't hardly hear
8 why you said that while ago. Why did you not feel like
9 getting out?

10 A. I was pregnant.

11 Q. And how far along were you?

12 A. Like five and a half months pregnant.

13 Q. Okay. So you didn't feel like getting out to pay
14 on your bill, so y'all drove on by?

15 A. Yes, sir.

16 Q. Which direction did you go from Tardy Furniture?

17 A. On the side of Tardy's like -- what is the name of
18 that street on the side? On the side of Tardy's?

19 Q. Is it Carrollton?

20 A. Carrollton Avenue.

21 BY MR. CARTER: I object.

22 BY THE COURT: Overruled.

23 BY MR. EVANS:

24 Q. All right, once you turned on to Carrollton, which
25 direction did you go then?

26 A. I went straight up like, straight up like you are
27 going toward Powell Street.

28 Q. Okay. Do you know a person by the name of Curtis
29 Flowers?

Clemmie Fleming - DIRECT

1 A. Yes, sir.

2 Q. Do you see him in the courtroom today?

3 A. Yes, sir.

4 Q. Would you point to him and identify him, please.

5 A. Right there.

6 BY MR. EVANS: May the record reflect that she
7 has identified the Defendant, Curtis Flowers?

8 BY THE COURT: Let the record reflect that.

9 BY MR. EVANS:

10 Q. Once you turned on to Carrollton Street, did you
11 see anyone?

12 A. I seen Curtis.

13 Q. You seen Curtis?

14 A. Yes, sir.

15 Q. Where did you see him?

16 A. Like it was a big tree. It was a big tree on the,
17 like on the left-hand side of the road, and I seen him right
18 there running right along up in there.

19 Q. All right, now you are going to need to speak a
20 little louder.

21 A. I seen him running right along up in there.

22 Q. You saw him running?

23 A. Yes, sir.

24 Q. Was he running towards or away from the direction
25 of Tardy's store?

26 A. Away from the store.

27 Q. And when you first saw him, about how far was he
28 away from the building of Tardy's?

29 A. Like 90 something feet.

Clemmie Fleming - DIRECT

1 Q. Okay. Now did anybody go back out there with you
2 to determine how far it was?

3 A. John Johnson.

4 Q. Okay. So he was about 90 feet from the store
5 running away from it when you first saw him?

6 A. Yes, sir.

7 Q. What brought your attention to Curtis Flowers that
8 morning?

9 A. I just seen him running, and I ain't never seen him
10 run like that.

11 Q. You ain't never seen him run like that?

12 A. I figured something was wrong.

13 Q. Can you describe how he was running?

14 A. I, say I guess like somebody was after him.

15 Q. And what made you think that?

16 A. The way he was running.

17 Q. How long had you known Curtis Flowers at that time?

18 A. I been knowing him because he like, he stayed down
19 the road from my mama's house. We ain't never stayed too far
20 from each other.

21 Q. Okay, so you have known him most of your life?

22 A. Yes, sir.

23 Q. Once you saw him running there, did you see which
24 direction he went from there?

25 A. We had turned the curve.

26 Q. Okay. What was the last point at that time that
27 you saw him running?

28 A. Going across the yard of the pink house.

29 Q. He was running across the yard where the pink house

Clemmie Fleming - DIRECT

is?

A. Yes, sir.

Q. Now is that pink house still there?

A. No, sir.

Q. Which direction did you go after you saw him running from the direction of Tardy's and running across that yard?

A. Like down Powell Street.

Q. Okay.

A. And then we went like on the highway.

Q. Did you have an occasion to see him again?

A. Yes, sir.

Q. Where did you see him at that time?

A. Like he fixing to cross the highway.

Q. About what time did you leave your house to go pay on your bill that morning?

A. About 10:00, something around to 10:00, about around 10:00 something.

Q. Somewhere around 10:00?

A. Yes, sir.

Q. About how long did it take you to get to the store?

A. I would say about five minutes.

Q. Okay. And how long did you sit at the store before y'all pulled on around on to Carrollton Street?

A. We didn't sit no time. We didn't sit no time.

Q. All right, now who carried you down to there to pay on your bill?

A. Roy Harris.

Q. Is he a relative, friend, or--

Clemmie Fleming - DIRECT

1 A. A friend.

2 Q. Okay. Now after you made the round that you have
3 described and you saw him crossing the highway, so that the
4 jury will understand where, is there any kind of businesses
5 in the area where he crossed the highway?

6 A. Jeff's store.

7 Q. Jeff's store?

8 A. Yes, sir.

9 BY MR. EVANS: Your Honor, I will tender the
10 witness. Wait one second.

11 (State's Counsel confer.)

12 BY MR. EVANS:

13 Q. Yeah. Ms. Fleming, I want to show you Exhibit 5A
14 and ask if you can tell what this is?

15 A. It's the one, that's the side of the turn road that
16 I seen him on beside Tardy's.

17 Q. That's the same road you saw him on. Do you see
18 the approximate area on this picture that you first saw him?

19 A. Yes, sir. Where that car is.

20 Q. About where the car is at?

21 A. Uh-hum.

22 (Exhibit shown to Counsel opposite.)

23 Q. Ms. Fleming, I want to hand you Exhibit S-5A back,
24 and I will ask you to just put a red "X" about the place he
25 was when you first saw him?

26 A. (Witness marks on Exhibit S-5A.)

27 Q. All right, if you would darken that just a little
28 bit because it doesn't show up real well on there.

29 A. (Witness complies.)

Clemmie Fleming - DIRECT - CROSS

1 Q. Okay, thank you. And at the time you saw him at
2 that location, what was he doing?

3 A. Running.

4 BY MR. EVANS: Tender the witness, Your Honor.

5 BY MR. CARTER: One moment.

6 CROSS-EXAMINATION BY MR. CARTER:

7 Q. Ms. Fleming, had you seen that picture before?

8 A. No, sir.

9 Q. Do you recognize that car back there?

10 A. No, sir.

11 Q. How do you know that is 97 feet back there?

12 A. Mr. John Johnson took me around there and did the
13 steps.

14 Q. And you can look at this, this picture and say it's
15 97 feet from Tardy's to where that car is?

16 A. Well, he took me down there and did the steps.

17 Q. Now isn't it a fact that you don't really know how
18 far, how many steps from Tardy's that this vehicle is
19 located?

20 A. Well.

21 Q. Aren't you guessing?

22 A. Yes, sir.

23 Q. Ms. Fleming, did you all stop at Tardy's?

24 A. Yes, sir.

25 Q. How many months pregnant were you?

26 A. Five and a half.

27 Q. And you asked Mr. uh.

28 A. Roy.

29 Q. Roy to take you down there?

Clemmie Fleming - CROSS

1 A. Yeah.

2 Q. How were you feeling when you asked Mr. Roy to take
3 you down there?

4 A. I didn't feel good, but I just wanted her to stop
5 calling me.

6 Q. Okay, so you went down there to pay it?

7 A. Uh-hum.

8 Q. How did you feel when you got there right there in
9 front of Ms. Tardy's store?

10 A. I didn't feel good. I didn't feel like getting
11 out, so I didn't.

12 Q. You didn't feel good either time?

13 A. Uh-uh.

14 Q. You didn't feel good when you left; is that
15 correct?

16 A. No.

17 Q. And you didn't feel good when you got to the store?

18 A. (No response.)

19 Q. And you asked Mr. Roy to go in and pay it for you?

20 A. Yeah.

21 Q. Now this is the first time that you are saying
22 this? Is that correct?

23 A. I asked him. I asked him to go in for me, and he
24 didn't want to go in. So I went for my-- I was going to go
25 in myself.

26 Q. Okay, did you tell John Johnson that you asked
27 Mr. Roy to go in?

28 A. I don't know if I told him or not.

29 Q. Okay. Now you did talk to John Johnson, didn't

Clemmie Fleming - CROSS

1 you?

2 A. Yes.

3 Q. Who else did you talk to with the police department
4 or the DA's Office?

5 A. A lot. Like two more men. I don't know.

6 Q. Did you talk to Mr. Evans?

7 A. Yes, sir.

8 Q. Now isn't it a fact that you didn't give a
9 statement about this until April 11, 1997?

10 A. Yes.

11 Q. And that is seven or eight months later; is that
12 correct?

13 A. Yes, sir.

14 Q. Did you know about a reward by that time?

15 A. No, sir.

16 Q. You hadn't seen it in the paper?

17 A. It just doesn't-- I didn't pay it, I didn't pay, I
18 didn't pay that stuff no attention. I had told a girl that I
19 was working with, and she told them. And I told her not to
20 tell, and then she told it anyway. That's how I ended up in
21 court telling you.

22 Q. Okay, did you tell John Johnson that?

23 A. No.

24 Q. What you just said.

25 A. She said she had a friend she wanted me to talk to.

26 Q. Did you tell John Johnson what you are telling the
27 Court?

28 A. Yes, sir.

29 Q. Are you sure of that? So that should be in your

Clemmie Fleming - CROSS

1 statement; is that correct?

2 A. Yes, sir.

3 Q. Was your statement taped?

4 A. Yes, sir.

5 Q. Okay, did you sign anything?

6 A. No, sir.

7 Q. What was that other lady's name again?

8 A. Wanda Meeks.

9 Q. So you was behind on your bill; you were getting
10 calls. You didn't really feel like it or feel good, but you
11 decided to hire somebody, and you did hire Mr. Harris; is
12 that correct?

13 A. Yes, sir.

14 Q. To take you to Tardy's. You got to Tardy's. You
15 parked there momentarily; is that correct?

16 A. Yes, sir.

17 Q. How long were you there?

18 A. Like, we wasn't there long.

19 Q. How long were you there?

20 A. Like a few seconds, then we left.

21 Q. Few seconds. Did you say Mr. Harris, "Wait; give
22 me a moment to see if I feel any better"?

23 A. No, sir.

24 Q. So you did -- you weren't able to, you didn't feel
25 like you were able to walk into the store and pay the bill;
26 is that correct?

27 A. I didn't, I didn't feel good. I feel sick at the
28 stomach.

29 Q. Feel sick at your stomach. So where did Mr. Harris

Clemmie Fleming - CROSS

1 take you after that?

2 A. My sister's house.

3 Q. Okay, and you got out at your sister's house and
4 went inside, didn't you?

5 A. Uh-hum.

6 Q. And you stayed over there, and you talked to your
7 sisters, didn't you?

8 A. Uh-hum.

9 Q. How many sisters did you see?

10 A. Two.

11 Q. How long did you stay there?

12 A. Not that long.

13 Q. How long is not that long?

14 A. I don't know. Maybe five or ten minutes. I don't
15 know.

16 Q. Then you-- and did you ask anybody to take you back
17 to Tardy's so you could pay your bill?

18 A. I went home and went to sleep.

19 Q. Did you ever pay that bill?

20 A. My brother supposed to have been paying it off.

21 Q. Did you ever pay--

22 A. -- no.

23 Q. Did you go to the doctor since you wasn't feeling
24 well?

25 A. No.

26 Q. You didn't need to go, did you?

27 A. Not just being pregnant, not go to no doctor for
28 being pregnant and I know why I'm sick.

29 Q. Okay, did you ask your sisters for any medicine?

Clemmie Fleming - CROSS

1 A. No.

2 Q. Did you even tell your sisters you were too sick to
3 go into Tardy's?

4 A. Uh-uh.

5 Q. What is your sister's name?

6 A. Mary Fleming.

7 Q. What is the other one's name?

8 A. Neechie Fleming.

9 Q. So Mr. Harris told you he wasn't walking in the
10 store and paying the bill for you; is that what you are
11 telling the Court?

12 A. He told me to go in there and pay it myself.

13 Q. How many times did you ask him to go do it for you?

14 A. Once.

15 Q. Did you offer him money to go in the store--

16 A. -- I gave him.

17 Q. --and pay it for you?

18 A. No, sir.

19 Q. But you paid him to take you down there; is that
20 correct?

21 A. Yes, sir.

22 Q. Was he reluctant to take you down to the store?

23 A. He didn't mind.

24 Q. He wouldn't have minded going in there paying the
25 bill either, would he?

26 A. He didn't go.

27 Q. Was he mean or obstinate when he said no?

28 A. He just said he wasn't going in there. We wanted
29 me to go for myself.

Clemmie Fleming - CROSS

1 Q. Did you ask him to hold on a minute; let me see if
2 I feel like walking later?

3 A. No.

4 Q. Now isn't it a fact that you could have -- and
5 clarify this for me. I don't want to be wrong. Had you
6 desired -- one moment.

7 (Defense Counsel confer.)

8 Q. Isn't it a fact that had you desired so, that you
9 could have, that you were physically able to walk in that
10 store and pay that bill?

11 A. Yes, sir.

12 Q. What did Mr. Flowers have on when you allegedly saw
13 him running?

14 A. I didn't pay no attention to what he had on. I
15 just knew that was him. I seen his face. I know him when I
16 see him.

17 Q. Okay, you didn't notice any clothing at all?

18 A. I don't pay no attention to nobody's clothes.

19 Q. So you saw a person running. But you didn't pay
20 any attention to the clothing?

21 A. No, sir.

22 Q. Now what about Mr. Flowers, what about that person
23 running that indicated to you that he was running like
24 somebody was after him?

25 A. Because of the way he was running like if somebody
26 was behind him or something. I don't know.

27 Q. Okay, what did he do? Did you see him look around?

28 A. No.

29 Q. So he wasn't running looking back from side to

Clemmie Fleming - CROSS

1 side; is that correct?

2 A. No, sir.

3 Q. Did you see a weapon or anything?

4 A. No, sir.

5 Q. Could you tell us, could you clarify for me since
6 you believe he was running like somebody was after him, what
7 was it about his behavior other than the fact that he was
8 running that made you think somebody was after him, or he was
9 acting like somebody was after him?

10 A. That's all. He was just running.

11 Q. And you said he was running from-- how do you know
12 he was running from Tardy's?

13 A. I didn't say he was running from Tardy's. I said
14 he was running from that direction.

15 Q. But he was also running from the direction of the
16 cleaners there. Wasn't there a cleaners there?

17 A. Uh-hum.

18 Q. There was a Coast to Coast there; right?

19 A. Right.

20 Q. A Weed Brothers?

21 A. Uh-hum.

22 Q. There is a lot of things downtown, banks, various
23 other places; is that correct?

24 A. Yes, sir.

25 Q. So you really don't know where he was running from,
26 do you?

27 A. No.

28 Q. And you never saw him go towards Tardy's; is that
29 correct?

Clemmie Fleming - CROSS

1 A. No, sir.

2 Q. You never saw him on Tardy's property; is that
3 correct?

4 A. No, sir.

5 Q. Now this thing about asking Roy Harris to go in the
6 store and pay your bill; I hope I haven't asked this before.
7 I apologize if I did. I don't remember. Do you remember
8 telling any of the investigators that you asked Mr. Harris to
9 go in and pay the bill for you and he rejected? He objected,
10 said no?

11 A. I don't know.

12 Q. When you saw this person running, do you know if
13 you were the only person who saw him running?

14 A. Roy seen him.

15 Q. How do you know?

16 A. Because he looked at him too.

17 Q. So you were watching the person running, and then
18 you was watching Mr. Harris too, and you saw Mr. Harris
19 watching him?

20 A. Roy looked. He slowed up.

21 Q. Okay, what side -- I'm trying to be clear. When
22 you saw this person running on Carrollton, you all were on
23 Carrollton going toward Church; is that correct?

24 A. Yes, sir.

25 Q. Was this person in front of you or behind you?

26 A. He was in front. We were passing by, and he was in
27 front of us, and then we passed on by him.

28 Q. Was he on the left side of you or the right side?

29 A. On the left.

Clemmie Fleming - CROSS

1 Q. So you had to look -- he was on Mr. Harris' side?

2 A. Yes, sir.

3 Q. Had he gotten completely to Church by the time you
4 saw him?

5 A. No, sir.

6 Q. And you all left at that point, and you turned on
7 Church; is that correct?

8 A. Yes, sir.

9 Q. You turned left. Where did you go after Church?

10 A. Up Powell, up the, straight up and then got on
11 Powell.

12 Q. Make a right on Powell?

13 A. Yes, sir.

14 Q. And Powell will take you to 51; is that correct?

15 A. Yes, sir.

16 Q. And by the time you got to 51, you saw this person
17 running again?

18 A. Yes, sir.

19 Q. So this person outran the truck and got to 51 by
20 the time you got there?

21 A. Well, I seen him again. I seen him on the side
22 like coming across the highway.

23 Q. Now which way did this person run? Did you see
24 this person running turn on Church? This person didn't run
25 up Church, did they?

26 A. No, sir.

27 Q. And did they run-- you didn't see them running down
28 Powell, did you?

29 A. No, sir.

Clemmie Fleming - CROSS

1 Q. But this person was running so fast that they
2 apparently outran the truck and was at Powell by the time you
3 got there; is that correct?

4 A. Well.

5 Q. By the time you got to 51; I'm sorry. I'm not
6 trying to confuse you. I promise.

7 A. Yes, sir.

8 Q. Now Mr. Harris didn't stop anywhere, did he?

9 A. Uh-uh.

10 Q. Do you know if this person had on a cap or not?

11 A. No, sir.

12 Q. So this person, when you saw this person about 51,
13 this person was still running wide open?

14 A. They were running.

15 Q. Was they running faster, slower or about the same
16 as when you saw him on Carrollton?

17 A. Well, I could just tell that they were running.

18 Q. Now I believe you said earlier -- correct me if I'm
19 wrong -- that when you saw them first, they were running wide
20 open like somebody was after them; is that correct?

21 A. Yes, sir.

22 Q. But by the time you got to Powell, you saw the
23 person running, but you are not sure whether they were
24 running wide open at that point or like somebody was after
25 them; is that correct?

26 A. Yes, sir.

27 Q. Do you know a Stacy Wright?

28 A. Yes, sir.

29 Q. Do you know Latarsha Blissett?

Clemmie Fleming - CROSS

1 A. Yes, sir.

2 Q. Do you owe Tardy's money now?

3 A. No, sir.

4 Q. If you never paid that bill, how is it that you
5 don't owe any money?

6 A. Because my brother supposed to have been paying it
7 off.

8 Q. Supposed to have been or did?

9 A. I don't know if he did or not. We ain't never talk
10 about it no more.

11 Q. Okay, and you haven't been hounded by Tardy's
12 Furniture store any more about coming to pay it either, have
13 you?

14 A. No, sir.

15 Q. Now was that furniture ever taken from you?

16 A. I gave it to my sister.

17 Q. But you were, in fact, told when you were sent
18 letters and called that if you didn't come pay it, it was
19 going to be taken, wasn't you? Weren't you told that?

20 A. Yes, sir.

21 Q. Latarsha Blissett is your friend; right?

22 A. My cousin.

23 Q. Your cousin. Stacy Wright is your friend; right?

24 A. My cousin.

25 Q. Your cousins. Aren't they also your friends?

26 A. Yes, sir.

27 Q. Now when you went down to Tardy's, what time was
28 it?

29 A. Like going on 10:00.

Clemmie Fleming - CROSS

1 Q. Going on 10:00. You didn't see any police cars at
2 that time; right?

3 A. No, sir.

4 Q. You didn't hear any sirens?

5 A. No.

6 Q. Were there any cars parked at Tardy's besides you
7 and Mr. Harris?

8 A. It was some cars parked.

9 Q. Was anybody in the store?

10 A. I don't know. I ain't never got out and went in.

11 Q. Okay. Did the store look like it was open?

12 A. Yes, sir.

13 Q. You had got called that morning to come down there,
14 didn't you, or did you get called that--

15 A. -- that night.

16 Q. That night. One moment. I think I'm finished.

17 (Defense Counsel confer.)

18 Q. Ms. Fleming.

19 A. Yes.

20 Q. When you went to your sister Mary's house, did you
21 tell Mary that you saw somebody running from Tardy's or
22 running in that area?

23 A. I told her a couple of days later. I didn't tell
24 her the same day.

25 Q. You didn't tell her the same day?

26 A. No, sir.

27 BY MR. CARTER: Now that's all. We tender.

28 REDIRECT EXAMINATION BY MR. EVANS:

29 Q. Ms. Fleming, the 90 feet from Tardy's that you say

Clemmie Fleming - REDIRECT

1 the Defendant was when you first saw him running, who made
2 that measurement?

3 A. Me and Mr. John Johnson.

4 Q. Were you present when he measured where you said
5 you saw him?

6 A. Yes, sir.

7 Q. And when you first told Wanda Meeks that you saw
8 him, Curtis Flowers running from Tardy's, when did you tell
9 her?

10 A. I told her -- we was at work, and we was on our
11 lunch break. And I was telling her about it, and I told her,
12 don't say nothing. And she said she had friends she wanted
13 to talk, that wanted to talk to me about it.

14 Q. Why did you ask her not to tell anybody that you
15 saw Curtis?

16 A. Because I wasn't going to say nothing.

17 Q. You didn't want to get involved?

18 A. Yes, sir.

19 Q. Now what direction did y'all go once you turned off
20 of Carrollton?

21 A. Like straight up and then we went on Powell.

22 Q. Went on Powell. Which direction did you go then?

23 A. Went on down to the highway.

24 Q. Down to where?

25 A. To the highway. To 51 and came up.

26 **BY MR. CARTER:** I couldn't hear her.

27 **BY THE COURT:** Speak up, Ms. Fleming.

28 **BY THE WITNESS:**

29 A. 51. On 51. We went on 51.

Clemmie Fleming - REDIRECT

1 Q. Okay, and then you came back up the highway towards
2 Jeff's store?

3 A. Yes, sir.

4 Q. Now so you didn't go straight from where you saw
5 him to the highway; is that correct?

6 A. No, sir.

7 Q. You were coming back up the highway when you saw
8 him running across the highway?

9 A. Yes, sir.

10 Q. So he didn't have to outrun the vehicle, did he?

11 A. No, sir.

12 Q. Now there has been a lot of discussion about how he
13 was running. When you first saw him running there behind
14 Tardy's store, was he jogging, running wide open, or what was
15 he doing?

16 A. I guess he was running wide open.

17 Q. Do you know how much your brother has paid on your
18 furniture bill?

19 A. No, sir.

20 Q. Now you have been asked about Latarsha Blissett and
21 Stacy Wright. Do you know if either one of them have
22 connections with the Defendant?

23 A. Yes, sir.

24 Q. What are their connections to the Defendant?

25 A. Tarsha go with his cousin.

26 Q. Is this Defendant the person you saw running behind
27 Tardy's?

28 A. Yes, sir.

29 BY MR. EVANS: Nothing further, Your Honor.

Patricia Sullivan - DIRECT

1 BY THE COURT: Is she finally excused?

2 BY MR. EVANS: Yes, sir.

3 BY THE COURT: Mr. Fleming, you are free to go.

4 WITNESS EXCUSED.

5 BY MR. EVANS: Patricia Hallmon.

6 BY THE COURT: Has she been sworn?

7 BY MR. EVANS: No, sir. She wasn't here.

8 (While waiting on the witness to enter the
9 courtroom, a Sheriff's Deputy confers with Mr. Evans.)

10 BY MR. EVANS: Your Honor, he is asking about the
11 last two witnesses being excused. The State has
12 released them, but before I tell him to let them go, I
13 need to make sure that the Defense doesn't want to
14 keep them.

15 BY MR. DE GRUY: They can be released.

16 BY THE COURT: Okay.

17 PATRICIA HALLMON SULLIVAN,
18 a black female called to testify as a witness by the State of
19 Mississippi, having first been duly sworn, testified as
20 follows, to-wit:

21 BY THE COURT: Have a seat up here, ma'am. State
22 your name.

23 BY THE WITNESS: Patricia Sullivan.

24 BY MR. EVANS: May I proceed, Your Honor?

25 BY THE COURT: Yes.

26 DIRECT EXAMINATION BY MR. EVANS:

27 Q. All right, Ms. Sullivan, directing your attention
28 back to July the 16th, 1996, were you Patricia Hallmon at
29 that time?

Patricia Sullivan - DIRECT

1 A. Yes, I was.

2 Q. Where did you live?

3 A. On McNutt Drive.

4 Q. And what address?

5 A. 702. 700 and 702. I lived in both of those
6 addresses.

7 Q. Okay. At that time did you know a person by the
8 name of Curtis Flowers?

9 A. Yes.

10 Q. In relationship to where you lived, where did he
11 live?

12 A. Just next door, walking, within feets, just walking
13 distance.

14 Q. Okay, and how close are these houses together?

15 A. Well, less than five, less than five feet. It is
16 just --

17 Q. --They are just--

18 A. --walk out of one door and walk right across to the
19 next.

20 Q. So the house that he lived in wasn't but about five
21 feet from where you lived?

22 A. Right.

23 Q. Who did he live with?

24 A. Connie Moore.

25 Q. And did any children stay there?

26 A. Yes.

27 Q. Who were they?

28 A. Her children's.

29 Q. And what are their names?

Patricia Sullivan - DIRECT

1 A. Marcus, Lemarcus, Marissa and Brittany.

2 Q. Ms. Sullivan, did you have any special connection
3 with Connie Moore and her family?

4 A. Yes. I was very close friends to them.

5 Q. Did you have any specific connection with her
6 daughter Brittany?

7 A. Yes.

8 Q. What was that?

9 A. I was her godmother.

10 Q. How long at that time had you known Curtis Flowers?

11 A. I knew Curtis off and-- I knew him for a while. I
12 been knowing Curtis, but after he moved there, I got to know
13 him real well, got to know him real well.

14 Q. Now the person that you have been talking about
15 that you know, Curtis Flowers, do you see him in the
16 courtroom today?

17 A. Yes.

18 Q. Would you point to him and identify him, please?

19 A. (Witness points) There.

20 BY MR. EVANS: May the record reflect that she
21 has identified the Defendant, Curtis Flowers?

22 BY THE COURT: Let the record reflect that.

23 BY MR. EVANS:

24 Q. Ms. Sullivan, you remember the day that the four
25 people were murdered at Tardy Furniture, don't you?

26 A. Yes.

27 Q. Did you have an occasion to see the Defendant that
28 morning?

29 A. Yes.

Patricia Sullivan - DIRECT

1 Q. What was the first time you saw him that morning?

2 A. That morning I seen him as I was on my walk, and I
3 was going -- I had went already around the block, and I was
4 coming back home, and I seen him. He was sitting on the
5 porch.

6 Q. What time of the morning was that?

7 A. It was about 15 minutes until 5:00 or a quarter
8 to -- it was in the quarter to 5:00, but it wasn't 5:00. It
9 was, it wasn't minutes from -- it was less than 20 minutes
10 from 5:00. Most likely a quarter to 5:00.

11 Q. Okay. And what was he doing while you were
12 walking?

13 A. He wasn't doing anything. He just was sitting
14 there on the porch smoking--

15 Q. -- Was there anything unusual about that?

16 A. No, he was just sitting there on the porch smoking,
17 and I waved and said hi, but, you know, he didn't say
18 anything. He didn't say nothing back. He didn't speak, so I
19 just went on home, and that was unusual because he always
20 speak.

21 Q. Did you see him later that morning?

22 A. Yes, I did.

23 Q. About what time?

24 A. It was about 7:30.

25 Q. What was he doing when you saw him about 7:30?

26 A. He was just going in the house. He was running.
27 He was running like he was going in the house, going in their
28 house.

29 Q. And where was he running from?

Patricia Sullivan - DIRECT

1 A. From over the hill. Over across the hill like
2 where we stay, in the back it was like a hill.

3 Q. Okay. Did he run all the way inside the house at
4 that time?

5 A. Well, I just seen him running into the house, to
6 the door. I didn't look, stay to look to see what was he,
7 did he go on in or not. I'm sure he did because he didn't
8 stay in there long.

9 Q. Okay. Now you say you knew him and Connie well at
10 that time; is that right?

11 A. Yes, I did.

12 Q. Had you ever seen him wearing any Fila Grant Hill
13 tennis shoes?

14 A. Yes, I have.

15 Q. About how often would he wear those shoes?

16 A. Well, I can't say because I didn't, I can't answer
17 that.

18 Q. Could you tell the morning of the murders at Tardy
19 Furniture if he had them on?

20 A. Yes, he had them on. Not at the early that
21 morning. He had them on at the seven, at the seven time
22 range when I seen him. That's when he had them on when I
23 seen him.

24 Q. Did you see him any other times that day?

25 A. No. I can't remember.

26 Q. The first time you saw him was somewhere around
27 4:45?

28 A. Right.

29 Q. And he was sitting on his porch?

Patricia Sullivan - DIRECT - CROSS

1 A. AM. Right.

2 Q. The second time you saw him was about 7:30, and he
3 was running to the house?

4 A. Right.

5 Q. And he was wearing Fila Grant Hill tennis shoes?

6 A. Yes, he was.

7 (State's Counsel confer.)

8 BY MR. EVANS: Your Honor, I will tender the
9 witness.

10 BY MR. CARTER: One moment.

11 CROSS-EXAMINATION BY MR. CARTER:

12 Q. How doing are you doing, Ms. Hallmon. My name is
13 Ray Carter.

14 A. Hi.

15 Q. How old is Brittany now? How old is Brittany now,
16 if you know?

17 A. I'm not for sure.

18 Q. Your godchild.

19 A. I'm not for sure because after all that happened, I
20 lost contact with everybody. They didn't have nothing to do
21 with me, so I lost contact, and I don't live here any more.

22 Q. Okay. Where do you live?

23 A. I live in Jackson, Mississippi.

24 Q. What is Brittany's date of birth? Do you remember?

25 A. No, I do not.

26 Q. Do you know her daddy's name?

27 A. Yes.

28 Q. What is it?

29 A. Sir?

Patricia Sullivan - CROSS

1 Q. What is it?

2 A. Willie.

3 Q. What is his last name?

4 A. I'm not for sure.

5 Q. How old was Brittany when this happened?

6 A. I'm not for sure of that either.

7 Q. Did you ever go to any birthday parties for her?

8 A. Yes, I attended one of them that she had. It was
9 right there at the house, and we all was right there at the
10 back porch at the house.

11 Q. But you don't remember when that was; right?

12 A. No, I do not.

13 Q. Do you remember what month it was?

14 A. No, I do not remember what month it was.

15 Q. So you don't remember your godchild's date of
16 birth? Is that what you are saying?

17 A. At the time -- I don't see why that matters because
18 that has nothing to do with this now. I don't remember that
19 and--

20 Q. Do you mind if I ask the questions?

21 A. No, I don't mind.

22 BY THE COURT: Now y'all can't argue back and
23 forth.

24 BY MR. CARTER:

25 Q. Give me a second. Are you okay? Are you ready?

26 A. Yes, I am ready.

27 Q. What were you doing around 4:30 or 4:50 on July 16,
28 1996?

29 A. Sir, I don't remember what I was doing about that

Patricia Sullivan - CROSS

1 time.

2 Q. Was it something that you normally do?

3 A. I don't know what I was doing. I don't know; it
4 could have been; it could have not. I don't know what I was
5 doing around about that time.

6 Q. Okay. Now Mr. Flowers was sitting on his back
7 porch; is that correct?

8 A. No, he wasn't. He was sitting on the front porch.

9 Q. Okay, I'm asking; I don't really know which one it
10 was. He was on his front porch, and where were you when you
11 saw him?

12 A. I was walking in front of the house on McNutt. I
13 had to pass by their house to get to my house, and I didn't
14 go through the side door. I went through the front door, so
15 I had to walk down to come up the side way. I didn't cut
16 through the yard. So I walked up my-- I passed by their
17 house, in front of their house, which my house I have to --
18 from the end of street, I'm the second house from the end.
19 And I had to walk by their house to get to my house.

20 Q. Okay, so your jogging trip would -- to go up
21 McNutt, I think McNutt turns; is that correct? It make a
22 right?

23 A. No, no, no, no.

24 Q. Is that correct? I don't know. Tell me.

25 A. No. From where -- the way I started out, I leave
26 from out of my front door; go out of my front door and turn
27 on Cemetery Lane; then go around, then make a turn, make a
28 left at the stop sign; then go up, then go up the hill; then
29 come back home.

Patricia Sullivan - CROSS

1 Q. Okay, so you make a left off of Cemetery. I think
2 that is Powell, isn't it?

3 A. Right. It's Powell.

4 Q. Then you go up and you make another left on McNutt?

5 A. No, I make a right. Oh, wait; let me see. I make
6 a left, right. I make a left and go up McNutt hill, right.
7 Go up there.

8 Q. Do you know Elaine Gholston?

9 A. Yes, I do.

10 Q. Did you sometimes see her leaving for work or
11 whatever when you were out jogging?

12 A. No, I did not. I used to see her when-- by the
13 time she get ready to leave about, around in the 6:00 area, I
14 didn't see her when I be finishing my walk. See I used to do
15 like three times around there, but this particular morning I
16 only did one. I had just left and went one and just did one.
17 I didn't do the three like I used to. I didn't do that.

18 Q. Now when you saw Mr. Flowers around that 4:45 or
19 4:50 period of time--

20 A. AM.

21 Q. AM, how was he dressed?

22 A. He had on, he had on short pants then. He had on
23 some blue shorts and a white T-shirt when he was sitting on
24 his porch at that time.

25 Q. Okay, was it not dark? And remember now, I wasn't
26 there; I don't know, so I'm asking you. I'm not trying to
27 put words in your mouth. But wouldn't it have been dark
28 around that time?

29 A. No, it was just beginning to -- that particular day

Patricia Sullivan - CROSS

1 it was just getting light. The light was just getting light.
2 It was just, just had left out of daylight savings time. It
3 was just fixing to get light because April it had changed.
4 It had changed.

5 Q. Okay. Now you talked to John Johnson; is that
6 correct?

7 A. Yes, I did.

8 Q. How many times did you talk to him?

9 A. Once-- I'm not for sure. Once or twice. I'm not
10 for sure.

11 Q. Did you talk to anyone else associated with the
12 investigation of this case--

13 A. -- no, I didn't.

14 Q. --other than Mr. Johnson? Mr. Johnson is the only
15 person you talked to?

16 A. I talked to Mr. Evans.

17 Q. Okay, when did you talk to him? Did you talk to
18 him at the same time?

19 A. No, I did not.

20 Q. What month is it that you talked to Mr. Johnson?
21 Do you remember?

22 A. I talked to him -- I'm not for sure, but I believe
23 it was, it was in July.

24 Q. Okay, could it have been August the 7th, 1996?

25 A. Could have, but I'm for sure -- I'm not positive,
26 but it could have been July also. It could have been in
27 August also too.

28 Q. Okay. You are not positive. Tell me why, why
29 could it have been July? What is it that makes you think it

Patricia Sullivan - CROSS

1 could have been July?

2 A. Well, one thing is that -- let me see; just give me
3 some time. Just give me some time. Because after, because
4 that's the month that the murders took place and also because
5 I was living so close to them, and I was living right by
6 them, and anybody can come to you and ask you questions. And
7 I'm not for sure.

8 Q. Now what kind of shoes did Mr. Flowers have on when
9 you saw him around 4:45 or 4:50?

10 A. He didn't have on any. He was on the porch. I
11 couldn't see way up there. I just seen his clothes. I
12 wasn't looking down at his feet because there was rails on
13 the porch. I didn't see him with no shoes. I didn't see no
14 shoes at 4:45 AM. I didn't see none at all.

15 Q. Now you say the second time you saw Mr. Flowers you
16 saw him about 7:30 AM; is that correct?

17 A. That's correct.

18 Q. And what did he have on at that time?

19 A. That time he had on a white, it could have been
20 cream, but white shirt. To me it was a white shirt with
21 writing on the front, with some writing on the front. I
22 don't know what the writing said, and he had on some black
23 windsuit pants like nylon pants, and they was unzipped on the
24 leg.

25 Q. What kind of shoes did he have on then?

26 A. Some Filas, Grant Hill.

27 Q. What color are they?

28 A. They were white with the different color. They
29 were white with the, they had blue or red, one of the signs

Patricia Sullivan - CROSS

1 on it. It was the Fila Grant Hills.

2 Q. And forgive me if I wasn't listening or I couldn't
3 hear; how long had you known Mr. Flowers before this incident
4 occurred?

5 A. I knowed, I have been knowing him a while. I just,
6 I knew him when he used to come to Carrollton, Mississippi,
7 because that's where I'm from. I used to go to school down
8 there.

9 Q. Okay, about how--

10 A. --He used to go with one of my cousins. I know, I
11 know Mr. Flowers.

12 Q. How old was Mr. Flowers back then?

13 A. I don't know. I don't know how old that man is,
14 was.

15 Q. Okay, just hold on; I'm trying to figure out--

16 A. I don't know. I'm sorry.

17 Q. I promise you I'm not trying to argue with you.
18 All I'm trying to get is some idea, and we may have to
19 speculate. I'm trying to get some idea how long you had
20 known him before July 16th. Did you know him longer than
21 five years?

22 A. Yes, I have.

23 Q. Okay, did you know him ten? Had you known him
24 longer than ten years before that day?

25 A. It had been a while because I used to come to
26 Winona. I was coming with somebody up here in Winona and
27 from child, from high school. So yes, I did. I been knowing
28 him a while. I know Mr. Flowers.

29 Q. How long had y'all been neighbors before the

Patricia Sullivan - CROSS

1 incident occurred?

2 A. Well, I'm not sure, but I'm just going to answer it
3 this way. I was living there; I moved on McNutt; let me see.
4 (Pause.) I believe -- now I'm not for sure; that has been a
5 long time.

6 Q. I understand.

7 A. I stayed there about 11 or 12 years on McNutt. So
8 I think I moved there in 1990 or '91. It was one or the
9 other. I believe, it could have been '91 that I moved there,
10 but he wasn't there when I moved there. He wasn't living
11 with her when I moved there so--

12 Q. So Connie was already there when you got there?

13 A. I can't remember which one of us was there first,
14 sir. I don't know, but she was there. I'm saying I don't
15 know how long, if I moved there before she did or she moved
16 there before me. I'm kind of thinking I moved there first
17 and then she moved. I'm not for sure, sir. I'm not for sure
18 who moved there first. I just know I lived there.

19 Q. Okay, I'm going to give you a moment. I'm not
20 trying to argue with you. I promise you--

21 A. --Okay, fine. It's just that I don't know. It has
22 been a while now.

23 Q. Let me give you a minute to calm down. And you
24 have got to remember; now I don't know either, so that's why
25 I am asking?

26 A. Well, see, if anybody would have told me I need my
27 lease and everything like that, I would have got a copy from
28 the housing authority somewhere or something. I'm not for
29 sure. I just know I lived there, and then I moved to the

Patricia Sullivan - CROSS

1 next apartment that they had occupied, but they had moved
2 out. So I don't know for sure how long I stayed there.

3 Q. Okay, and I'm not asking you to be sure. And you
4 don't need your lease. All I'm trying to find out, if you
5 know, and I don't know -- if I knew the answer, I wouldn't
6 ask you -- is about how long were you and Curtis neighbors
7 and. And when I say you and Curtis neighbors, I'm talking
8 about how long were you there and Curtis was as far as you
9 know, living in the house with Connie?

10 A. Well, sir, let me answer that like this. I don't
11 know what goes on in people's house. I used to see him go in
12 there and come out. He couldn't have been living there. I
13 can't say what goes on in this lady's house and I'm not there
14 looking at it. I can't tell, just say something that
15 somebody is doing something in their house since I'm not in
16 there.

17 Q. Yes, ma'am. I know; I understand.

18 A. So I don't know when did he move in, how long he
19 moved in. I just see him.

20 Q. Okay. Now you don't even know if, if he moved in;
21 is that correct?

22 A. Yes, he was staying there. I know Curtis. Curtis,
23 I know him. I know he was staying there, but I just don't
24 know when he started staying there. I don't know that.

25 Q. Was Curtis--

26 A. I'm sorry.

27 Q. Would it be false on my part to say that Curtis and
28 you had been neighbors for at least a year?

29 A. I don't call you no liar, and I ain't going to say

Patricia Sullivan - CROSS

1 I'm lying. I don't know. I just do not know. I don't keep
2 up with that. He wasn't my man. I don't keep up with that.
3 I don't know how long he was staying with her. I'm sorry,
4 sir. I'm sorry. I don't know. I don't know how long he
5 been staying--

6 Q. -- Is it possible that Mr. Flowers lived at that
7 address next to you at least a year?

8 A. I'm not -- I refuse to answer that question because
9 I don't know the answer.

10 Q. Okay, I can accept that. You don't know how long
11 he has living next to you; is that correct?

12 A. That's right, but I know he was living there, and I
13 know he was there. I done got him to do things for me. I
14 know Curtis. I don't know -- and I'm not fixing to answer
15 that, that question. I refuse.

16 Q. How many times had you seen Mr. Flowers with those
17 Grant Hill Fila shoes on?

18 A. I don't pay attention to his feet all the time. I
19 know my kids wanted some, and that's what brought my
20 attention to it. And he kept them real clean, so I couldn't
21 say how long he been wearing them. I don't notice him from
22 head to toe every time I see him. But I know Fila Grant Hill
23 tennis shoes. And I can't say did he wear them all the time,
24 or what do he be wearing all the time. I don't know. I'm
25 sorry.

26 Q. Had you ever seen him with any other type of shoes
27 on?

28 A. Yes.

29 Q. What other kind--

Patricia Sullivan - CROSS

1 A. Church shoes.

2 Q. You ever seen him in that? What kind of church
3 shoes did he have on?

4 A. Nice pair of church shoes. I don't know, black. I
5 don't know what kind they were, but I am just saying some
6 nice black tennis shoes-- I mean some nice black Sunday
7 shoes.

8 Q. You ever seen him with any black tennis shoes on?

9 A. No.

10 Q. You ever seen him with any tennis shoes on other
11 than Grant Hill Filas?

12 A. Uh-uh. No.

13 Q. So as far as you know, that is all he wore was
14 Grant Hill Fila shoes?

15 A. No, I can't say that. That's all that I seen. I
16 don't know what he wear or what he have. That's what I seen
17 with my two eyes.

18 Q. Now how many times -- you have told us about two
19 times that you saw Mr. Flowers that day. Didn't you also see
20 him again that day sometime, or did you?

21 A. No. Now I'm not for sure. No, I'm not for sure.
22 I ain't see him, you know. I don't, I'm not for sure. If I
23 said it in a testimony somewhere, call to my attention, but
24 if I did -- I do remember those two times that I seen him.

25 Q. Tell us about how long did you stay at your house
26 that morning?

27 A. How long did I stay there?

28 Q. What was your day like on July 16, 1997 [sic]?

29 A. At home.

Patricia Sullivan - CROSS

1 Q. You was there all day?

2 A. Yeah.

3 Q. You didn't leave?

4 A. I don't know if I left or not, sir. I don't know
5 if I left, could have left sometime over in the day after
6 school. I could have.

7 Q. And you didn't leave before school?

8 A. No. I just went walking. When I left home and
9 went walking that morning.

10 Q. And that's the only time you left before your kids
11 got off school?

12 A. Right. That's the only thing I can remember.

13 Q. Now the second time you saw Mr. Flowers, he was
14 coming from over the hill going towards his house; is that
15 correct?

16 A. Right.

17 Q. Now you don't know where he was coming from?

18 A. No, I do not.

19 Q. But isn't it a fact that his parents live over
20 across the hill?

21 A. Yes, it is. Lots of relatives.

22 Q. Okay. Now you didn't see Mr. Flowers when he left
23 before coming back at 7:30, did you?

24 A. Before? Say that again now.

25 Q. I don't want to confuse you.

26 A. Say that again, please.

27 Q. I'm going to say it again. You saw him coming back
28 about 7:30?

29 A. Right.

Patricia Sullivan - CROSS

1 Q. But coming back, but you didn't see him leave
2 before he came back about 7:30; is that correct? Let me
3 see--

4 A. -- Wait; now you are getting -- can you make it
5 more clearer for me, please.

6 Q. Okay, listen carefully now. Okay, you have
7 testified that you saw him coming back about 7:30?

8 A. Right.

9 Q. Okay, if he was coming back from across the hill,
10 now he had to leave the house at some point to get across the
11 hill; is that correct?

12 A. Right.

13 Q. Did you see him leave the house on that occasion
14 before you saw him coming back?

15 A. That morning at 7:30.

16 Q. Right.

17 A. Yes, I did.

18 Q. What time did he leave then?

19 A. He didn't stay in the house 20 to 30 minutes. He
20 didn't stay -- I could say he stayed in the house around
21 about -- it could have been about 20, 25 minutes, and he
22 left, because see, the only reason why I saw him then was I
23 was getting ready to hang out some clothes and seen him
24 leaving.

25 Q. Okay. So you saw him leave the house before 7:30;
26 is that what you're saying?

27 A. No. No, I didn't say that.

28 Q. Okay, listen very carefully. I'm trying to-- I'm
29 sorry I can't make it any plainer. I am trying.

Patricia Sullivan - CROSS

1 A. I didn't say that.

2 Q. This is what I'm asking. In order for Mr. Flowers
3 for to be coming across the hill when you saw him at 7:30,
4 that would mean he had to go across the hill--

5 A. -- No, I did not see him leave before 7:30.

6 Q. Okay, you didn't see him leave?

7 A. No, I did not.

8 Q. Okay. Now after 7:30, your testimony, I believe,
9 is that he stayed in the house for a little while; is that
10 correct?

11 A. That's right.

12 Q. About how long did he stay?

13 A. Well, like I said, about -- I'm not exact because I
14 didn't have time to, you know, to be willing to follow him,
15 but I know from the time I left out of the house to come back
16 in the house, I had a load of clothes in. And I know what
17 cycle it was on, so it had to have been no more than -- he
18 didn't stay in the house long; wasn't no more than 20 or 25
19 minutes.

20 Q. Okay. So did you see him come back after he left
21 at 7:30? Wait, wait a minute; I'm sorry. You saw him about
22 7:30 coming in, and he went in the house. Did you see him
23 leave after that?

24 A. Yes.

25 Q. And about what time did he leave?

26 A. I'm not for sure about what time. I just knowed it
27 wasn't -- he didn't stay in the house no more than 20
28 minutes. He didn't even stay in the house 30 minutes.

29 Q. What did he have on when he left after coming back

Patricia Sullivan - CROSS

1 at 7:30, go in the house for 20 minutes, and left again; what
2 did he have on?

3 A. He had on the same clothes that he went in there.
4 He had on his black windsuit pants that was unzipped on the
5 leg and his white shirt with the writing on it.

6 Q. Did you hear about a reward being out, Ms. Hallmon?

7 A. No, I did not.

8 Q. Mr. Johnson didn't tell you that?

9 A. No, he did not.

10 BY MR. CARTER: One moment.

11 (Defense Counsel confer.)

12 BY MR. CARTER:

13 Q. Do you have a brother named Odell Hallmon?

14 A. Yes, I do. Jr.

15 Q. Junior?

16 A. Yes.

17 Q. How old is he?

18 A. Man, I can't keep up with my own kids' birthday.

19 Let me see. You just don't know. I am aging myself now. I
20 got to get this stuff together. Hold up.

21 Q. I am almost fifty now.

22 A. That is my brother, so I don't have, don't need to
23 keep up with him no way. (Pause) Just give me a little time.
24 I will tell you.

25 Q. That's okay. It's not that important.

26 A. No, he is a grown man.

27 Q. Aren't you aware that your brother claims that you
28 and he made this story up just to get money?

29 A. He lying.

Patricia Sullivan - CROSS

1 Q. Well, aren't -- you do know that he said that?

2 A. I don't know. No, I'm not for sure. No, I'm
3 ain't, uh-uh. I'm not aware of it, that he going to -- he is
4 saying that me and him made up something. No, I'm not aware
5 of it. I'm not.

6 Q. You don't know that Odell has given a statement--

7 BY MR. EVANS: -- Your Honor, if we are going
8 to-- I don't have any objection at all to this, but I
9 am planning on going into the statement that he is
10 going to testify to at this trial if we go into this.

11 BY MR. CARTER: Hold on a minute, Your Honor.

12 (Mr. Carter confers with Mr. Evans.)

13 BY MR. CARTER:

14 Q. So you are not aware of that is what you're saying;
15 right?

16 A. No, I'm not.

17 Q. Back at July 16, 1996, were you working?

18 A. No, I was not.

19 Q. How many children did you have at that time?

20 A. Three.

21 Q. As best you can recall, what were their ages then?

22 A. Nine. Wait a minute so I can be sure. They are
23 three years apart. So 91, 92, 93, 94, 95, 96. Dominick was
24 four. 86, Chivarus was ten. No, Chivarus was 11. I take
25 that back. He was 11. Kevin was, he just had turned an age
26 in May. Wait a minute. And Kevin was 8.

27 Q. Now Ms. Hallmon, back at that time had you seen
28 anybody else with Grant Hill Fila shoes on?

29 A. No, not really because, no.

Patricia Sullivan - CROSS

1 Q. So Curtis was the only person you knew was wearing
2 some?

3 A. I don't know. It was peoples could have been
4 wearing some, but I just seen him because he was close by. I
5 seen his tennis shoes because he was right there close by.

6 Q. Okay now, so let he just make sure.

7 A. I'm sure other people was wearing them, but I know
8 for sure what I seen.

9 Q. Other people were wearing them, you are telling me?

10 A. I am sure they was somewhere around and about. I
11 ain't got, I don't--

12 Q. Who else did you see with some on?

13 A. I didn't see anybody, sir. I said I am sure other
14 peoples was wearing them since they was a popular shoe at the
15 time.

16 Q. How long do you claim Curtis had been wearing Grant
17 Hill Filas back at that time?

18 A. I couldn't answer that, sir. I don't know. I
19 don't even know when he bought them. I don't know.

20 Q. One moment. I think I'm wrapping up. (Pause) Now
21 you didn't see Mr. Flowers with any weapon, did you?

22 A. No, I did not.

23 Q. You didn't see him with any blood on him either,
24 did you?

25 A. No, I did not.

26 Q. Now let me see if you can clarify this for me. You
27 said Grant Hill Filas were popular back then?

28 A. Uh-hum.

29 Q. How do you know they were popular?

Patricia Sullivan - CROSS - REDIRECT

1 A. Because they--

2 BY THE COURT: -- Let's move on now, Mr. Carter.

3 We have covered this ground for about 30 minutes now.

4 She has already answered those kind of questions. To

5 start with, that is not a relevant question anyhow.

6 Move on.

7 BY MR. CARTER:

8 Q. You didn't see Curtis on the east side of Highway
9 51 at any point, did you?

10 A. No, sir. I was at home. I seen this at home, sir,
11 on 700B and 702A McNutt Drive, Winona, Mississippi.

12 Q. Do you understand my question, ma'am?

13 A. Yes, I do.

14 BY MR. EVANS: Your Honor, she answered the
15 question.

16 BY MR. CARTER: One moment.

17 (Defense Counsel confer.)

18 BY MR. CARTER: We tender.

19 REDIRECT EXAMINATION BY MR. EVANS:

20 Q. Ms. Hallmon, real briefly, I want to make sure that
21 I have got these times right. The first time you saw the
22 Defendant was about 4:45 in the morning?

23 A. Right.

24 Q. And he was sitting on his porch smoking a
25 cigarette?

26 A. Yes. I guess it was a cigarette.

27 Q. The second time you saw him was about 7:30. He was
28 running back to the house?

29 A. Right.

Patricia Sullivan - REDIRECT

1 Q. And then about 20 or 25 minutes later, you saw him
2 leave the house again?

3 A. Yes, I did.

4 Q. And was that the last time you saw him that day?

5 A. Yes. That I can recall.

6 Q. Okay. Now you have been asked about reward. Has a
7 reward got anything to do with you being here today?

8 A. No, sir. I am not here because I want to be here
9 or because of no reward money. I want to put this behind me
10 and go on with my life because I am sickly myself. I am
11 tired of this. I'm tired. I'm not here for no reward or for
12 nothing. I just want this to be over with.

13 Q. And is this Defendant sitting over here the same
14 person that you have described seeing at those times?

15 A. Yes, it is.

16 Q. Is he the same person that you saw wearing Fila
17 Grant Hills the morning of the murder?

18 A. Yes, he is.

19 BY MR. EVANS: Nothing further, Your Honor. We
20 would ask that she be finally excused.

21 BY THE COURT: Any objection to excusing her?

22 BY MR. CARTER: Yes. We want to recall her.

23 BY THE COURT: Ma'am, you will have to stay. You
24 need to go to the witness room.

25 WITNESS LEAVES THE COURTROOM.

26 BY THE COURT: Ladies and gentlemen, we are going
27 to take a short break at this time.

28 (A NOTE WAS GIVEN TO THE COURT. COUNSEL APPROACH
29 THE BENCH AS THE AUDIENCE IS LEAVING. THE JURY IS OUT.)

Motion - JURY OUT

1 **BY MR. DE GRUY:** Your Honor, can I make a motion
2 before me--

3 **BY THE COURT:** All right. (Pounds gavel.) Court
4 is still in session.

5 **BY MR. DE GRUY:** Your Honor, we make a motion for
6 a mistrial at this point. The Judge's comment that
7 the popularity of the shoes was irrelevant, an issue
8 of how popular shoes is irrelevant is, coming from the
9 Court is a direction to the jury to disregard what is
10 clearly relevant because they are using this to
11 establish a link to Mr. Flowers, and how many other
12 shoes were around town is clearly relevant.

13 **BY THE COURT:** No, he asked her whether she knew
14 whether they were popular or not. That is not
15 relevant at all. He asked her over and over and over
16 again about whether she had seen other folks with
17 shoes on, what kind of shoes he had on, whether they
18 were black or whether they were white. She testified
19 that her children had said they were popular and that
20 her children wanted them. That's the reason she
21 recognized them. It was cumulative, and under 403, I
22 can rule without objection as being cumulative and a
23 waste of time. And it certainly was both of those.
24 The motion is overruled.

25 **BY MR. CARTER:** Your Honor, she had--

26 **BY THE COURT:** -- I have already ruled.

27 **BY MR. EVANS:** Do you need us in here for that,
28 to talk to her?

29 **BY THE COURT:** Do what?

Juror Excused - REST OF JURY OUT

1 **BY MR. EVANS:** Do you need us in here to talk to
2 the juror?

3 **BY THE COURT:** Yeah, I think so. Okay, Holly.
4 I'm going to need Ms. Richardson. Let's do this in
5 chambers.

6 (WHEREUPON THE COURT, ALL COUNSEL, AND THE
7 DEFENDANT WENT TO CHAMBERS OUT OF THE PRESENCE OF THE JURY.
8 JUROR MS. SHERRY ANN RICHARDSON WAS ESCORTED INTO CHAMBERS.)

9 **BY THE COURT:** Hi, Ms. Richardson. Ms.
10 Richardson, we have gotten another report about your
11 sister. We have gotten two of them as a matter of
12 fact. They have moved her to the Baptist, and
13 Ms. Rivers, I believe it is, has stated that, she
14 stated that it was real bad, and she had been hurting
15 real bad. And the doctor said something else is going
16 on. And then we got another report that she is having
17 an acute heart attack, and they are taking her to
18 surgery, which I assume is at Baptist. You need to
19 tell me what you need to do.

20 **BY JUROR MS. RICHARDSON:** I need to go. She is
21 by herself.

22 **BY THE COURT:** Okay.

23 **BY JUROR MS. RICHARDSON:** She has got no husband.
24 Her daughter is retarded and--

25 **BY THE COURT:** Her daughter is retarded?

26 **BY JUROR MS. RICHARDSON:** Uh-hum, so she has no
27 one.

28 **BY THE COURT:** You are her only sister?

29 **BY JUROR MS. RICHARDSON:** Well, she has got one

Juror Excused - REST OF JURY OUT

1 more that don't speak to her so.

2 BY THE COURT: Okay, and it is just her husband
3 and her retarded daughter?

4 BY JUROR MS. RICHARDSON: She doesn't have a
5 husband.

6 BY THE COURT: Oh.

7 BY JUROR MS. RICHARDSON: It is just her.

8 BY THE COURT: Just her and her retarded
9 daughter? All right. Ms. Richardson, I'm going to
10 excuse you, and I hope this turns out okay.

11 BY JUROR MS. RICHARDSON: Thank you.

12 BY THE COURT: Thank you, ma'am. I appreciate
13 your service.

14 BY JUROR MS. RICHARDSON: Thank you.

15 (Juror Ms. Richardson leaves chambers.)

16 BY THE COURT: If y'all have any objection for
17 the record, you can state it.

18 BY MR. EVANS: None.

19 BY MR. DE GRUY: No, Judge.

20 BY THE COURT: Okay. I do not, I will have to
21 look at the list as to who that moves up.

22 BY MR. EVANS: I can't remember.

23 BY THE COURT: It's not Ms. Blaylock. It's the
24 one before her.

25 BY MS. FERRARO: The blond lady.

26 BY THE COURT: Huh?

27 BY MR. HILL: I have got it on the list out
28 there.

29 BY THE COURT: Ms. Dees? I believe it's

Bench Conference - JURY OUT

Ms. Dees.

BY MR. EVANS: I think that's right.

BY THE COURT: Okay.

CONFERENCE IN CHAMBERS WAS CONCLUDED.

(FOLLOWING THE MORNING RECESS ON FEBRUARY 9, 2004,
THE TRIAL CONTINUED IN OPEN COURT WITH ALL COUNSEL AND THE
DEFENDANT PRESENT.)

BY THE COURT: I am ready for the jury.

BY MR. EVANS: Judge, you are going to need to
instruct them--

BY THE COURT: --Wait, wait; I'm sorry. Hold on
just a second. I need to see y'all up here.

(CONFERENCE AT THE BENCH WITH THE JURY OUT AS
FOLLOWS:)

BY THE COURT: For the record, the District
Attorney has informed me that the next witness will be
Porky Collins, who is now deceased. Mr. Collins has
testified before under oath subject to cross-
examination. For the record, he has done that in both
previous trials. So under the rules the District
Attorney is going to put that transcript on of his
testimony, I believe, in the second trial?

BY MR. EVANS: Yes, sir.

BY THE COURT: Is that correct? We have, Counsel
and the Court have previously discussed that, and my
understanding is there no objection to that procedure.
Is that right?

BY MR. DE GRUY: That's proper under the law.

BY THE COURT: Okay. Now I have a question for

Bench Conference - JURY OUT

1 y'all. When we left on Saturday, y'all were going to
2 discuss the objections that are in that transcript.

3 BY MR. EVANS: Yes, sir. What I'm planning on
4 doing, and I think this would be the proper way. I
5 have -- well, and it wouldn't matter with the one that
6 is reading it, but all I intend to do is ask the
7 questions. I don't intend to cover any of the
8 objections. I think they would be inappropriate for
9 the purpose of this trial. I think the best way to do
10 it would be if I just asked the questions that were
11 asked of the witness, let the person read his answers,
12 and then whichever defense attorney wants to could ask
13 the questions that they asked. But as far as putting
14 in the record what the Court said on different things
15 or what either attorney said on different things, I
16 think would be inappropriate.

17 BY MR. DE GRUY: Our position is that, for
18 example, the Court made a, took judicial notice of the
19 knowledge that the distance being described by
20 Mr. Collins was 30 feet. It was not actually done in
21 the form of an objection, but during the testimony
22 when he gave a description of the distance he was from
23 the people he saw, Mr. Lumumba interrupted and said,
24 "Judge, estimating for the record, the area he
25 identified out here is about, I would say 30 feet."
26 And there was some discussion about that.

27 BY MR. EVANS: I don't have any objection with us
28 putting in there--

29 BY THE COURT: --But did I have a ruling or just

Bench Conference - JURY OUT

1 agree?

2 BY MR. DE GRUY: Yes, sir. "By the Court: The
3 Court will take judicial knowledge that it looks like
4 it's about 30 feet." And there was no objection. I
5 mean that was everybody's agreement with that.

6 BY MR. EVANS: Right.

7 BY MR. DE GRUY: But that should, our position is
8 that should go into the record.

9 BY MR. EVANS: I don't have any problem with
10 that.

11 BY THE COURT: Okay.

12 BY MR. EVANS: The only other thing that is going
13 to be confusing; we discuss--

14 BY THE COURT: -- I didn't remember what the
15 other objections were or if there were any.

16 BY MR. DE GRUY: I don't believe there were any--

17 BY MR. EVANS: -- It really wasn't that many
18 objections.

19 BY THE COURT: Well, I would think there wouldn't
20 be.

21 BY MR. EVANS: The only other thing that is going
22 to be confusing, there are exhibits that were used
23 that aren't -- we are not going to have to use at this
24 point, but we can just still read the testimony
25 without them--

26 BY MS. FERRARO: --There is a map.

27 BY MR. EVANS: Yeah.

28 BY MR. DE GRUY: The maps were maps of Winona.

29 BY THE COURT: Which are already in evidence.

Bench Conference - JURY OUT

1 BY MR. DE GRUY: No, they--

2 BY MR. EVANS: -- These aren't.

3 BY THE COURT: Oh, I'm sorry.

4 BY MR. DE GRUY: I think it was different in
5 Gulfport because the jurors had never been to Winona.

6 BY MR. EVANS: Right. They didn't understand
7 the--

8 BY MR. DE GRUY: -- So I mean we can read the
9 description, I think, without the map. The map was
10 admitted as an exhibit by Mr. Lumumba, but it's a map
11 of the town of Winona.

12 BY MR. EVANS: Which I don't think we have got to
13 have for this.

14 BY MR. DE GRUY: So I mean we have already heard
15 testimony about the area around here, and I think that
16 we weren't -- I mean we didn't introduce intend to
17 introduce the map because this jury is from Winona.

18 BY MR. EVANS: And before this jury rests, they
19 are going to have several maps to look at if they need
20 them through other witnesses.

21 BY THE COURT: Okay. Now let me go over again
22 what I'm going to tell them. I'm going to tell them
23 that the next witness by the State is Porky Collins,
24 and Porky Collins is now deceased. And under the
25 rules of court any prior statement, any sworn, prior
26 sworn statement by him, that a prior sworn statement
27 by him is admissible, and they can consider it as if
28 he were here; is that right?

29 BY MR. EVANS: Yes, sir. And if you would, I

Bench Conference - JURY OUT

1 would like for you to go a little further and explain
2 to them that they will not get a copy of that
3 statement, that it would be like any other witness,
4 that they would have to base it on what they hear from
5 the stand, just so that they will understand why we
6 don't give them a copy of it.

7 **BY THE COURT:** Right. I think that is the law.
8 What is his whole name?

9 **BY MR. EVANS:** Charles "Porky" Collins.

10 **BY MR. CARTER:** Was he a big fellow?

11 **BY MR. EVANS:** Not that big.

12 **BY THE COURT:** Y'all ready?

13 **BY MR. EVANS:** Yes, sir.

14 **END BENCH CONFERENCE.**

15 (Mr. Evans hands a copy of the transcript to the
16 Court and confers with him off the record.)

17 **JURY ENTERS THE COURTROOM.**

18 **BY THE COURT:** Who is your next witness, Mr.
19 Evans?

20 **BY MR. EVANS:** Your Honor, our next witness would
21 be Charles "Porky" Collins.

22 **BY THE COURT:** Ladies and gentlemen, Mr. Collins
23 is now deceased. When a witness has died, under our
24 rules a prior sworn statement under certain conditions
25 can then be, by that witness can be used for testimony
26 as if he was alive and here to give that testimony.
27 And so what they are going to do is read to you a
28 transcript of that statement or statements that he
29 made. You can consider this evidence as you would any

Charles Collins - DIRECT (AS READ)

1 other witness that testifies in this case. However,
2 you will not get a copy of this transcript, so you
3 must consider it and take notes or evaluate it as you
4 would anybody that is a live witness up here. All
5 right.

6 BY THE BAILIFF: Does he need to be sworn?

7 BY THE COURT: No, I don't think he does because
8 he is not the witness. You need to identify him
9 though for the record.

10 BY MR. EVANS: Yes, sir. I will.

11 WILLIAM BLACKMON takes the witness stand to read
12 the answers of the witness, CHARLES "PORKY" COLLINS.

13 BY THE COURT: State your name, please, sir.

14 BY MR. BLACKMON: William Blackmon.

15 EXAMINATION BY MR. EVANS:

16 Q. Mr. Blackmon, how are you employed?

17 A. Investigator with the District Attorney's Office.

18 Q. All right, you have been asked to read a record
19 that was given by Charles "Porky" Collins. Do you have a
20 certified copy of that with you?

21 A. Yes, sir.

22 Q. What I will do, I will ask you questions and just
23 ask that you read his parts into the record. Would you do
24 that?

25 A. Yes, sir.

26 WHEREUPON, THE PRIOR RECORD OF THE TESTIMONY OF
27 CHARLES "PORKY" COLLINS, a white male who was previously
28 called by the State of Mississippi and sworn to tell the
29 truth, testified at that time as follows:

Charles Collins - DIRECT (AS READ)

DIRECT EXAMINATION BY MR. EVANS:

1 Q. Would you state your name.

2 A. Charles Collins.

3 Q. Mr. Collins, where do you live?

4 A. 502 Bell Street, Winona.

5 Q. And how long have you lived in Winona?

6 A. All but four years all my life.

7 Q. Mr. Collins, I want to direct your attention back
8 to July the 16th of 1996, the day that the murders occurred
9 at Tardy Furniture. Do you remember that day?

10 A. I do.

11 Q. Can you tell us starting with that morning what
12 you were doing and if you had an occasion to see any of the
13 victims?

14 A. I got up that morning. I had to go to the bank,
15 and my wife had a list of stuff, one of these honey-do lists
16 you have fixed out for you, you know. And I had to bring my
17 car to the mechanic's shop and put it in there. And I went
18 to town. I had to go to the bank, and when I passed the
19 bank, I looked at the clock on the car, and it either had
20 9:58 or 9:59 on it, and the bank doesn't open until 9
21 o'clock. So I went to the post office. I had to get a--

22 Q. --Is that 9:58 or 8:58?

23 A. I mean 8:58. It was either 8:58 or 8:59.

24 Q. Okay.

25 A. And I went to the post office, and I got a postal
26 money order, and I filled it out, and I mailed it. As I
27 started out the post office, there was a little breezeway in
28 between the front door and the inside of the post office.
29

Charles Collins - DIRECT (AS READ)

1 Carmen Rigby come in one side of it, and I came in the other
2 side and we spoke.

3 Q. All right, let me stop you there a minute. From
4 where Tardy Furniture is located on Front Street, how far is
5 it to this bank that you saw Carmen Rigby at?

6 A. I didn't see her at the bank. I said I passed the
7 bank.

8 Q. Okay, you passed the bank.

9 A. I had to go in the bank that morning on some
10 business, and the bank wasn't open, so I went to the post
11 office first.

12 Q. Okay, it's the post office that you went to?

13 A. I went to the post office first.

14 Q. How far is that from Tardy Furniture? Just
15 approximately; are we talking about a block or two?

16 A. About three blocks.

17 Q. Okay. What was Ms. Rigby doing when you saw her?

18 A. When I saw her, she had some, looked like some
19 mail or something she may have picked up at the post office
20 in her hand. Her purse was over her shoulder, and some keys
21 were on her ring finger.

22 Q. You must have been fairly close to her.

23 A. I was as close as from here to there to her. We
24 just met right there going out the same door.

25 Q. All right, what happened next after you met her
26 there?

27 A. She spoke to me and I spoke to her.

28 Q. Okay, what did you do next?

29 A. Then we walked out the door together, and we

Charles Collins - DIRECT (AS READ)

1 walked down, we walked and we talked going down the steps at
2 the post office. And when we got to the street, there were
3 several cars coming. We waited. We was talking all this
4 time. We walked up almost where my car was, and I didn't
5 know it was her car that was parked there in front of mine,
6 but we were parked-- I was parked right behind her in front
7 of the First Baptist Church. We stood there and talked for
8 several minutes, and we was talking about our children, just
9 casual conversation. And she turned to the left to go to her
10 car. And I turned to the right to get in mine, and I got in
11 my car, and I was parked directly behind her. And while she
12 was talking to me, she had still had them keys on her finger.
13 And she got in the car and I just thought to myself, that is
14 an awful clean car. It was--and mine was filthy, and she
15 looked over and she looked up in the mirror, and she done her
16 hair like this right here. She put the keys in the car. The
17 reason I know she did that, the back-up lights came on on the
18 car, and I said well, I will just pull in behind her. And I
19 pulled out behind her.

20 And I was going to pay my gas bill, but I passed
21 the street. So I said well, I have got, had to go to the
22 cleaners, so I said well, I will make my turn to your right
23 on Front Street or Main Street or ever what that is, which
24 goes by Tardy Furniture Company.

25 Q. Okay.

26 A. And I had to stop and wait on a car. It was a car
27 coming down the street, and when I got in front of Tardy
28 Furniture Company, I just sort of glanced over, and she waved
29 at me. I went down to the cleaners, and there was a bunch of

Charles Collins - DIRECT (AS READ)

1 cars parked there.

2 Q. All right, let me stop you right there for a
3 minute. I want to show you State's Exhibit 4 and ask that
4 you look at this photograph if you would.

5 A. All right.

6 Q. In that photograph can you see the cleaners that
7 you were headed to at that time?

8 A. Yes, I do.

9 Q. If you would, step down here. I want to get you
10 to point out -- you can hold the photograph. Just hold it in
11 front of you where the whole jury can see it and point out
12 where the cleaners is located.

13 A. It's located right here. Right there.

14 Q. All right. Thank you. And as you were driving by
15 going toward the cleaners, where was Carmen Rigby going at
16 that time?

17 A. She was fixing to go in the door. She, like I
18 said, she had her purse over her shoulder. She had a, looked
19 like might have been mail she had gotten from the post
20 office. I don't know that's what it was, but that's what it
21 looked like to me.

22 Q. And which door was she going in?

23 A. The front door.

24 Q. Of Tardy Furniture?

25 A. Of Tardy Furniture Company.

26 Q. Approximately what time was that?

27 A. It probably took me five minutes inside the post
28 office or maybe a little longer, ten minutes at the most from
29 the time that-- well, the time we talked. It may have been a

Charles Collins - DIRECT (AS READ)

1 little over ten minutes because by the time I filled out the
2 money order and mailed it, walked out and we talked, and by
3 the time I got there, it may have been a little over ten
4 minutes.

5 Q. Okay, sir. Ten or fifteen minutes?

6 A. Ten or fifteen minutes. Fifteen minutes at the
7 most.

8 Q. And once you saw Ms. Rigby going in the front door
9 of Tardy Furniture, where did you go then?

10 A. I went down to the cleaners. There was several, a
11 bunch of cars parked there, and I am handicapped, and at that
12 times I can't walk very far. So what I had to get in the
13 cleaners wasn't something rushing. It wasn't something
14 pressing. I could have done it the day before. I could have
15 done it the day after. It wasn't nothing real pressing, so I
16 went back, turned right back up. I went back up, I guess it
17 is Summit Street, the street the post office is on, and went
18 and paid my gas bill.

19 Q. Okay. After you paid your gas bill, where did you
20 go then?

21 A. I started back down; I come back down by Barksdale
22 Garner's service station, and when I got where Summit Street
23 is, my wife called me on the car phone and told me that I had
24 got the wrong spark plugs for--

25 Q. Okay, now the service station that you are talking
26 about, is that on the end of Front Street?

27 A. It's on the opposite end of the street from where
28 the cleaners is at.

29 Q. Okay. Approximately how far in distance?

Charles Collins - DIRECT (AS READ)

1 A. It's two blocks. It's two streets. It's two
2 blocks.

3 Q. Okay. When you found out that you had picked up
4 the wrong spark plugs, what did you do?

5 A. I went and I had some-- when I had to go to the
6 bank, I had some papers that I, two sets of papers that I was
7 supposed to have brought with me. And I had picked up, and I
8 was supposed to have picked up the money for the stuff at the
9 cleaners. My wife told me where it was all at, and I had
10 forgotten to pick up one of the envelopes from the, for the
11 bank. And I don't know if I went by the house then or if I
12 went to Don Mitchell's. But I went to Don Mitchell's and got
13 the spark plugs that I had gotten, brought them back to
14 Wal-Mart and got the right spark plugs. I went back to Don
15 Mitchell's and brought those spark plugs back down there.

16 Q. All right, do you know what time you were at
17 Wal-Mart picking up the spark plugs?

18 A. Well, I give a receipt to, I believe it was to
19 y'all that morning.

20 Q. Yes, sir.

21 A. Showing what time that I picked up those spark
22 plugs.

23 Q. Do you remember what time that was?

24 A. I'm going to say it was around, probably around
25 9:30, 9:40, something like that. I really don't know.

26 Q. Okay. Give me just a second. Mr. Collins, I show
27 you Exhibit S-99 and ask you to look at the time on the
28 bottom of that receipt and tell us exactly what time you
29 checked out at Wal-Mart?

Charles Collins - DIRECT (AS READ)

1 A. 9:43.30.

2 Q. Okay, and is that a copy of the receipt that you
3 furnished?

4 A. That's the copy of the receipt right there.

5 Q. All right. After you left Wal-Mart at 9:43, where
6 did you go next?

7 A. To Don Mitchell's.

8 Q. Okay, and where is it located?

9 A. About two and a half-- two, two and a half, to
10 three miles south of Winona.

11 Q. Okay, and how long did you stay there
12 approximately? -

13 A. I walked up and handed him the spark plugs, told
14 him I would see him later, and I got in my car and left.
15 Just long enough to hand him the spark plugs and get back out
16 in the highway and left.

17 Q. Once you did that, where did you go?

18 A. I went back by my house-- I believe that's when I
19 went back by my house and picked up the thing for the bank
20 and the money for the clothes at the cleaners.

21 Q. Is your house between Don Mitchell's and Tardy
22 Furniture?

23 A. It's about halfway between Don Mitchell's and
24 Tardy Furniture Company.

25 Q. All right. After you left your house at that
26 time, where did you go?

27 A. I went, was going to the cleaners first. And
28 that's when I passed the cleaners, and that's when I noticed
29 these two men standing there beside a car. One was standing

Charles Collins - DIRECT (AS READ)

1 in front of the car, and one was standing beside the car.

2 Q. And this was when you were down close to Tardy
3 Furniture?

4 A. It was just before you get to Tardy Furniture
5 Company on the opposite side of the street.

6 Q. Okay. What brought your attention to these two
7 men that were in front of Tardy Furniture?

8 A. They were making these hand gestures. I thought
9 they were arguing. In fact, I thought they was fixing to
10 fight.

11 Q. Okay. And which direction were you traveling when
12 you saw these two people?

13 A. South.

14 Q. How close to them did you come?

15 A. Within as close as from here to that rail right
16 there.

17 Q. Okay, this rail right here?

18 A. That rail right there, or closer.

19 Q. This one?

20 A. It was a car length. I was in the street. It was
21 a car length there and they was, the car was parked right
22 there. It was within that close or closer."

23 BY MR. EVANS: Your Honor, at this point, I
24 think, is when we were talking about the Court took
25 judicial notice that it was approximately 30 feet to
26 where he was pointing.

27 BY MR. CARTER: Your Honor, may we approach?

28 BY THE COURT: Yes.

29 BY MR. DE GRUY: I just want it to be clear. We

Collins - DIRECT - CROSS (As read)

1 Q. Mr. Collins, do you see the person that you looked
2 in the face and saw in front of Tardy Furniture going toward
3 Tardy Furniture in this courtroom?

4 A. I will always believe it's that man right there."

5 BY MR. EVANS: Your Honor, at this point--

6 BY THE COURT: You can read that part.

7 BY MR. EVANS: Okay. I put in the record, "May
8 the record reflect that he has pointed to and
9 identified the Defendant in this cause, Curtis
10 Flowers?"

11 BY MR. EVANS:

12 Q. All right, the next question: "As close as you
13 can pin it down because we know that you were at Wal-Mart at
14 9:43, what time do you think it was that you saw this man in
15 front of Tardy Furniture walking toward the direction of the
16 store?

17 A. Probably-- let's see; I went to Don Mitchell's,
18 probably took about five minutes. Fifteen to twenty minutes
19 at the most.

20 Q. So as close as we can estimate, we are talking
21 about somewhere around a little bit before 10:00 to a few
22 minutes after 10:00?

23 A. That's correct."

24 BY MR. EVANS: I tender the witness here, Your
25 Honor.

26 CROSS-EXAMINATION READ BY MS. FERARRO:

27 Q. "Good afternoon, Mr. Collins.

28 A. Good afternoon.

29 Q. Mr. Collins, would it be safe to say, just a brief

Charles Collins - CROSS (As read)

1 inquiry about something before we get into what your
2 testimony is. It would be safe to say that actually you have
3 a, you take medication sometimes because-- is that correct?

4 A. I take, yeah, I take medication sometime. I am
5 taking it today.

6 Q. Okay, and your medication you take, is it
7 medication that you take because you have a poor memory?

8 A. I wouldn't hardly think so. I don't think the
9 doctors think so either.

10 Q. Okay, is it true that you do have memory problems?

11 A. I wouldn't hardly think so.

12 Q. Okay. Would it be true that you have a lot of
13 problems remembering things?

14 A. I wouldn't hardly think so.

15 Q. Now it's true though that you did testify at
16 another hearing in this case some time ago; is that correct?

17 A. That's correct.

18 Q. Okay, and at that time there was a person there
19 taking down dictation or just like this person is now; is
20 that right? A court reporter?

21 A. That's correct.

22 Q. Okay, and they were, as you were talking, they
23 were typing; is that right?

24 A. That's correct.

25 Q. Now I'm going to show you a transcript of that
26 hearing, and now I notice that sometimes you have your
27 glasses on, and sometimes you have your glasses off; is that
28 right?

29 A. That's correct.

Charles Collins - CROSS (As read)

1 Q. Do you have glasses which are prescription
2 glasses?

3 A. That's correct.

4 Q. Do they help you see?

5 A. This close they do.

6 Q. Okay, do you wear those glasses when you are out
7 driving your car?

8 A. No, I do not.

9 Q. So you didn't have the glasses on that day; is
10 that correct?

11 A. No, but I had them with me.

12 Q. But you didn't have them on when you were looking
13 at Tardy's store?

14 A. I didn't need them to see Tardy's store.

15 Q. And you don't have them on when you were looking
16 at the persons that you said were two men? You didn't have
17 them on then?

18 A. I didn't need them to see them.

19 Q. Okay, but the question is did you have them on?

20 A. No, I did not.

21 Q. Okay, let me ask you, it says, this is a person
22 called Charles Collins here--" ... "Okay, now I'm going to
23 ask you to take a look here down at line 14 and then at
24 lines, all the way from 14 to 17, and then when you get
25 finished with reading those two lines to yourself, then let
26 me know. Then if you want to read anything else there, you
27 can also just to make sure it's in context, but then after
28 you do that, let me know...."

29 Q. "Okay, now what my question is at this point when

Charles Collins - CROSS (As read)

1 you are at that hearing, and this hearing is some time in
2 October of 1997?

3 A. Uh-hum.

4 Q. Were you asked this question, and did you give
5 this answer? 'You have problems with your memory, don't you,
6 Mr. Collins?' Question. Answer. 'I take a lot of
7 medication, sir, and I have trouble remembering a lot of
8 things; yes, sir.' Was that the answer you gave at that
9 time?

10 A. Yes, it was. Because at that time I had had a lot
11 of problems and I had had a lot of tests run, and at that
12 time I was having lot of, you know, at that time I was
13 having, you know, a little problem. Not just say, not
14 remember things that happened, but it's a lot of things that
15 if you take a lot of medication like that, you would
16 understand.

17 Q. Okay, I understand. And in fact, let me just
18 think about it for a minute. First of all, early that
19 morning you had taken some spark plugs down to Mr. Mitchell;
20 right?

21 A. That's correct.

22 Q. And it turned out that they were the wrong spark
23 plugs?

24 A. Yeah, and you want me to tell you why?

25 Q. If you--" ... "If you would like to, Mr. Collins,"
26 ... "You can explain your answer any time if you want after
27 you answer the question.

28 A. All right, I went to-- you know, they got a
29 computer at Wal-Mart. And you get help and they key this

Charles Collins - CROSS (As read)

1 thing in, and they tell, you tell them what kind of car you
2 got, and they tell you what kind of parts you need?

3 Q. Uh-hum.

4 A. The fellow keyed it in. He told me what kind of
5 part I needed, so I took it down there. And the memory there
6 was at the computer at Wal-Mart. I mean it wasn't mine.

7 Q. I see. So in any event, that's why you had the
8 wrong spark plugs?

9 A. That's why I had the wrong spark plugs.

10 Q. Now you left the house-- after you took those
11 spark plugs, then at some point you left the house again
12 going downtown to make a few runs; is that correct?

13 A. After I took, I took my car down there about 8
14 o'clock that morning and left it because the man didn't open
15 until 8:30, and I had business I had to take care of. That's
16 the reason the spark plugs was left down there. That's the
17 reason I didn't know they were the right ones--wrong ones.
18 If had of been there, he could have told me. I could have
19 went and swapped them right then, but he wasn't there. He
20 wasn't open.

21 Q. Okay. And when you went downtown the first time,
22 it would be safe to say you forgot to stop at the bank; is
23 that right?

24 A. No, I did not forget to stop at the bank. I just
25 told you; the bank wasn't open.

26 Q. Okay, but you forgot to stop at the bank before
27 you came back home; is that correct?

28 A. No, I did not.

29 Q. So it's not true that you went down there the

Charles Collins - CROSS (As read)

1 first time and forgot to stop at the bank; is that right?

2 A. That's correct. I did not forget to stop at the
3 bank. It wasn't open the first time, and then I got a
4 telephone call saying I had the wrong spark plugs, so I went
5 and changed spark plugs.

6 Q. Would it be safe to say you had forgotten some
7 papers that morning for the bank?

8 A. I had several different things. We were in the
9 process of buying some real estate. I had several different
10 things that I had to get, and I forgot--

11 Q. --Excuse me--

12 A. --one set of them, yes.

13 Q. Excuse me, and I don't have any problem with your
14 explaining the answer. Can you answer the question yes or
15 no, whatever, then explain so we will make sure we get an
16 answer. So the question is, is what you are telling me is
17 that you did forget some papers for the bank; right?

18 A. I forgot part of them, yes.

19 Q. Okay. And it would say that at another-- okay, it
20 would also be safe to say that the first time you went
21 downtown, you forgot the money to get the clothes out of the
22 cleaners; isn't that correct?

23 A. That's correct.

24 Q. So you forgot to get the money to get the clothes
25 out of the cleaners. You forgot some papers you say for the
26 bank. Are those two things correct?

27 A. That's correct.

28 Q. And as of this time, you are indicating that it's
29 not true that you forgot to go to the bank; is that right?

Charles Collins - CROSS (As read)

1 A. Do what now?

2 Q. You say that you didn't forget to go to the bank;
3 is that right?

4 A. No, I didn't forget to go to the bank.

5 Q. Okay, well, at one point when you were actually--
6 you were supposed to be paying a gas bill too; is that right?

7 A. I did pay a gas bill. I wasn't supposed to; I did
8 pay it.

9 Q. Okay. But you were going to pay that gas bill
10 when you-- remember you said you went down there and went to
11 the post office?

12 A. Yeah, I remember what I said.

13 Q. And you had, you are in there with Ms. Rigby; is
14 that correct?

15 A. Uh-huh.

16 Q. And then when she left, you were leaving too; is
17 that correct?

18 A. That's correct.

19 Q. And it was your intentions to stop at the place to
20 pay the gas bill and turn in there and pay the gas bill at
21 that time; is that right?

22 A. That's correct.

23 Q. And you drove right past the place and forgot to
24 stop there; correct?

25 A. That is nothing unusual. The way that street is
26 right there you could easily miss it.

27 Q. Okay, but--

28 A. --and it was some cars coming and I would have had
29 to stop and waited for them to pass, so I decided to go

Charles Collins - CROSS (As read)

1 straight on down to the cleaners.

2 Q. Okay, but-- and I understand that, Mr. Collins,
3 but I am just trying to establish a few things here. Did you
4 forget to turn in there and pay your gas bill?

5 A. No, I did not.

6 Q. I thought you just said that you did forget it;
7 that is easy to do. Did you forget it?

8 A. I said it would be easy to forget the way that
9 road is there, but it was some cars coming and I had to wait
10 for them to pass, and I said well, I might as well go on to
11 the cleaners.

12 Q. All right, so. Now let me understand that. You
13 did pass the street where you were supposed to pay the gas
14 bill; right?

15 A. Sure did.

16 Q. Okay. And why did you pass the street? I'm
17 sorry.

18 A. I just told you. There was some cars coming. I
19 would have had to have stopped and waited for those cars to
20 pass to turn in. So I said why stop there; I can go on to
21 the cleaners. I wasn't in any hurry that day.

22 Q. Okay, so let me, well, let me see. Okay, but this
23 is a day and, that you at some point had forgot the money to
24 get the clothes out of the cleaners; is that correct?

25 A. That's right.

26 Q. As the transcript says, okay. And this was a day
27 where at one point you passed the, for whatever reason, you
28 did pass, and we will get back to that again when we find it
29 in the transcript. But at whatever point, you did pass the

Charles Collins - CROSS (As read)

1 gas company or the place you were going to take the gas bill?

2 A. I just told you I did.

3 Q. Okay, and you forgot some papers you were supposed
4 to be using at the bank; is that correct?

5 A. I told you I did.

6 Q. Okay. And in fact, you went downtown two
7 different times, and you never did get the clothes out of the
8 cleaners; isn't that correct?

9 A. No, I did not.

10 Q. Okay, now let me ask you this. And at least
11 according to what it said at your transcript at the time that
12 you testified, you do take medication, and you do have memory
13 problems; is that correct? That's what it says here. Is
14 that right?

15 A. I think my memory is very well.

16 Q. Okay, but it says here that you have problems
17 remembering things?

18 A. I just told you at that time that statement right
19 there was making, I was having lots of problems.

20 Q. Okay, well--

21 A. --It wasn't during the time all this happened, but
22 at that time right there that that statement was made, I was
23 having lots of problems. You can check with the doctor.

24 Q. Okay, but here you didn't tell them, Well, I was
25 just having problems right now?

26 A. They didn't ask me.

27 Q. Okay, you didn't tell them I'm just having
28 problems right now, but I wasn't having problems back then.
29 You didn't say that?

Charles Collins - CROSS (As read)

1 A. They didn't ask me. I am answering the questions
2 just like you are asking me.

3 Q. Okay, but at that time it was on 7/16/96 when you
4 forgot to bring the papers for the bank; right? That's when
5 you forgot to do that?

6 A. That is nothing unusual for me. I get up every
7 morning. I don't have--

8 Q. --Well, excuse me. Excuse me, sir. Is that the
9 date that that happened on?

10 A. You are correct.

11 Q. Okay, and that's the date that it says here that
12 you forgot to bring the money for the cleaners; right?

13 A. That's correct.

14 Q. Now the other thing, let's trace your steps a
15 little bit here. You, from what I hear you saying is that
16 you had an opportunity to go downtown, and actually you went
17 downtown the first time, and that's when you saw Ms. Rigby;
18 is that correct?

19 A. Saw her" coming out of "the post office.

20 Q. Okay, and after you saw Ms. Rigby, you circled
21 around past the place where you were supposed to pay the gas
22 bill; is that correct?

23 A. No, I did not.

24 Q. Well, you didn't pay the gas bill?

25 A. I didn't circle around it though.

26 Q. But you didn't pay it?"

27 (NOTE: Mr. Blackmon mistakenly started reading the
28 next question and left out the answer which was "I didn't pay
29 it.")

Charles Collins - CROSS (As read)

1 BY MR. BLACKMON:

2 Q. "Okay, and then"--

3 BY MS. FERRARO: (Continues reading)

4 Q. "Okay, and then you didn't go to the cleaners
5 either?

6 A. I didn't, and I told you why.

7 Q. Okay. And that was because, you didn't go to the
8 cleaners because it was too many cars out there?

9 A. That's exactly right.

10 Q. Okay, but then you came back down again to
11 downtown the second time, and you still didn't go to the
12 cleaners?

13 A. That's when I saw the activity. That's when I
14 drove back up the street there to see what was going on.

15 Q. Okay. And now when you went downtown the second
16 time, that was after you went to Wal-Mart; is that right?

17 A. That's correct.

18 Q. And after you went to Wal-Mart, you-- well, we
19 know that it was about 9:43 according to your receipt when
20 you got that receipt in Wal-Mart; is that correct?

21 A. That's correct.

22 Q. Now when you get the receipt, you are at the
23 counter; is that correct?

24 A. That's correct.

25 Q. You are not outside in your car. You get the
26 receipt at the counter; right?

27 A. Why, sure.

28 Q. Okay, and then once you get the receipt, what you
29 did is you had to walk out and get to your car; is that

Charles Collins - CROSS (As read)

1 correct?

2 A. That's correct.

3 Q. And I think you said that you have some kind of
4 disability; is that correct?

5 A. Well, they have got a handicapped parking place
6 right there outside the door, and that's where I was parked.

7 Q. And that's where you were parked, but you still
8 have a disability; right?

9 A. That's right.

10 Q. So you had to walk out there and get in the spot
11 where the handicapped parking space was; right?

12 A. Why, sure.

13 Q. Okay, you had to go out the door; right?

14 A. That's right.

15 Q. And then you had to drive down to Don Mitchell's;
16 is that correct?

17 A. That's correct.

18 Q. And Don Mitchell's was like, you say about two
19 miles in the opposite direction from where Tardy's is. Is
20 that correct?

21 A. It's pretty close - two, two and a half, three
22 miles. It is pretty close. I don't know exactly how far it
23 is.

24 Q. And then when you go to Don Mitchell's, it's like,
25 Don Mitchell's is a place that you come up to it, and then
26 there is a fence or a gate there; is that right?

27 A. That's right.

28 Q. And you have to turn up and go into there, drive
29 in there before you can get to the office. It's a few feet

Charles Collins - CROSS (As read)

1 in there; isn't that correct?

2 A. It's 30 or 40 feet, 50 feet, something like that,
3 I imagine. I don't know.

4 Q. Then once you drive in there, you get out and you
5 go in and give the man the spark plugs?

6 A. No, I did not.

7 Q. Okay, you gave it to them from the car?

8 A. He was standing right there. I opened my door,
9 stood out and handed them to him, got back in my car, and
10 drove off.

11 Q. Okay, so you got out of the car, and then you got
12 back in your car?

13 A. That's right.

14 Q. So then you had to get your car together and drive
15 out of there. You weren't in a hurry; right?

16 A. No, I wasn't in any hurry. I didn't have nothing
17 pressing; I mean, you know.

18 Q. So you wasn't driving particularly fast?

19 A. No, I don't drive fast anyway.

20 Q. And we know you started this journey at 9:43;
21 right?

22 A. Well, that's what the receipt says.

23 Q. Okay, then you came all the way back down, and
24 what you did is you-- after you came from Don Mitchell's, you
25 went by your house; isn't that right?

26 A. That's exactly right.

27 Q. Okay, and you were actually prepared to go in your
28 house, and then your wife said, "Where is the clothes?"
29 Right?

Charles Collins - CROSS (As read)

1 A. No. When I came back out of the house is when she
2 asked me that.

3 Q. Oh, okay. You were in the house, and then when
4 you came back out of the house, your wife said, "Where is the
5 clothes?"

6 A. Yeah, she was working in her business. She has
7 got a business there.

8 Q. Okay, she has got a business right next to the
9 house?

10 A. Right there, yes.

11 Q. So then you had to get back into your car and then
12 go down to Tardy's; right?

13 A. I didn't go to Tardy's then. That's when I was
14 going to the cleaners.

15 Q. Okay, you were going to the cleaners, okay. And
16 what you did is, so after going to, coming out of Wal-Mart at
17 9:43, getting in your car - and I'm just trying to make sure
18 I got it right - in the handicapped spot, driving down to Don
19 Mitchell's, getting out of your car, handing the spark plugs
20 to Don Mitchell, got back in your car, going to your house.
21 Now you started this journey at 9:43; right?

22 A. Uh-hum.

23 Q. Then what you did is you are there at your house,
24 go in your house, come out of your house. Your wife sees
25 you. "Where is the cleaning"; right?

26 A. That's right. That's right, basically right.

27 Q. And then you get back in your car and you go to
28 Tardy's; is that correct?

29 A. No, I went to the cleaners.

Charles Collins - CROSS (As read)

1 Q. You went to the cleaners; I'm sorry. I'm sorry.
2 You went to the cleaners. Now that is-- but in order to go
3 to the cleaners, actually you could have went to the cleaners
4 without passing Tardy's; isn't that correct?

5 A. Oh, I could have went to the cleaners going by a
6 whole lot of other places, but that's the particular route I
7 took.

8 Q. Okay, but just, and I understand that and that is
9 fine. You can let the jury know that too, but it is true
10 that you could have went to the cleaners without going by
11 Tardy's; isn't that correct?

12 A. Yeah, but I went the fastest way.

13 Q. Well, let me ask you this. You actually went and
14 turned down Summit Street; isn't that correct?

15 A. That's exactly correct.

16 Q. And Summit Street, in order to get on Summit
17 Street, get to Summit Street you took your, you drove all the
18 way down Church Street, did you?

19 A. I drove straight up 51 Highway from my house to
20 Summit Street, took a right on Summit Street down to Main
21 Street, and that was the closest way.

22 Q. Okay, well, let me see if I can follow you on
23 that. I'm going to show you-- I'm going to first of all have
24 marked a little exhibit that the State shared with me and ask
25 you to look at it." ... "Now Mr. Collins, let me ask you
26 this. You are saying you didn't drive on Church Street; is
27 that right?

28 A. I did when I left Tardy's that time, I went down
29 Church Street that time.

Charles Collins - CROSS (As read)

1 Q. No, let me, let's get it straight now. I'm
2 talking about the time that you were coming back the second
3 time to go to the cleaners. You were going to the cleaners;
4 is that right? You were going to the cleaners. Once your
5 wife told you, "Where is the cleaning?" and you were supposed
6 to be going to the cleaners, that is what was going on;
7 right?

8 A. That's right.

9 Q. And you told us that you just went all the way
10 down 51 which is Applegate. 51 is Applegate; isn't that
11 true?

12 A. I think that's right.

13 Q. Okay, you went all the way down Applegate, and you
14 turned down Applegate, from Applegate on to Summit Street; is
15 that right?

16 A. That's right.

17 Q. And then you went down Summit until you got to
18 Front Street. Is that what you did?

19 A. That's exactly right.

20 Q. And you turned on Front Street, and that's the
21 only way that you were driving past Tardy's going to the
22 cleaners; isn't that correct?

23 A. That's correct.

24 Q. Okay, and you have indicated to me that was the
25 fastest way; right?

26 A. To me it is, yes.

27 Q. Okay, you didn't say anything about Church Street;
28 is that right?

29 A. Not at that time I didn't.

Charles Collins - CROSS (As read)

1 Q. Okay, well, now let me ask you this. I want to
2 introduce you to page 58. You just testified at a hearing
3 not too very long ago; is that right?

4 A. That's right.

5 Q. And at this particular hearing please read for me
6 here from, on page 58, questions 1 on down past line, well,
7 actually I'm really wanting you to start at line 1 and go
8 down past line 16 where you see these lines that we have
9 drawn there. When you get finished reading that to yourself,
10 let me know."

11 A. (Transcript reflects pause while witness reads.)

12 Q. "Okay, now were you asked these questions, and
13 that hearing didn't take place too long ago; right?

14 A. I know when it took place.

15 Q. Okay, and were you asked these questions on page
16 58, and you gave these answers, didn't you? 'And you went to
17 Don Mitchell's once-- well, actually twice before you went to
18 Wal-Mart's and once after you went to Wal-Mart.' Answer:
19 'That's correct.' That was the question that was answered;
20 is that correct?

21 A. That's correct.

22 Q. 'Right, okay.' Question. 'And you had gone by
23 your house to get the money that you had forgotten?' Answer:
24 'That's correct.' 'You went back downtown, and at the time
25 and you got back downtown, what street did you turn on?'
26 Answer: 'Went down Summit Street and turned south on Main
27 Street.' Question: 'Is Summit Street the street that the
28 bank is on?' Answer: 'That's right.' 'Did you go to the
29 bank at that time?' Answer: 'No, I did not because when I

Charles Collins - CROSS (As read)

1 came to town, I came up Church Street and turned down Summit
2 Street.' Is that what you said?

3 A. That's what it says there, but that is the third
4 time I went up there when I come down Church Street.

5 Q. But you are supposed to be going to the cleaners
6 at this time; right?

7 A. The third time I went I come down Church Street.
8 That's when-- the third time I went to the cleaners.

9 Q. Oh, you were going to the cleaners a third time?

10 A. Yeah, that's when I found out something had
11 happened at Tardy's, and I decided I would go on up there to
12 the cleaners to see what was going on. That's when I come
13 down Church, down Church Street.

14 Q. In any event, you just told us that you went all
15 the way down Applegate or 51, but there it says Church
16 Street; is that right?

17 A. That's what it says there, but the third time is
18 when I went down Church Street.

19 Q. I see. Okay, but now also you told me that you
20 never forgot to go to the bank, that you only forgot to take
21 some papers to the bank; isn't that right?

22 A. That's right.

23 Q. Can you look at this statement. Now this is, I'm
24 showing you what is--" ... "Okay. I'm showing you what is
25 marked as Defendant's Exhibit D-8 for identification
26 purposes, and I would like for you to -- do you see the
27 person's name at the top of that?

28 A. Uh-hum.

29 Q. And that is Porky Collins; is that correct?

Charles Collins - CROSS (As read)

1 A. That's right.

2 Q. Okay, and it says the statement is taken on
3 March-- 'Today's date is March 10, 1997.' That's what it
4 says; right?

5 A. That's right.

6 Q. And it has a place where it says 'Johnson' and
7 then it has 'Collins'; is that right?

8 A. Uh-hum.

9 Q. You know Mr. Johnson is the investigator; right?

10 A. You are talking about John Johnson?

11 Q. Yeah.

12 A. Yeah, I know him.

13 Q. And you are Mr. Collins; is that right?

14 A. That's right.

15 Q. Okay, why don't you go down here and you can look
16 at line, at the line that I am pointing to, and for the
17 record this is a line about 1, 2, 3, 4, 5, 6, 7 lines from
18 the bottom, Judge. And it is right here, and it says here--
19 could you read that line to yourself, please.

20 A. Oh, yeah. You want me to explain that to you?

21 Q. Well, let me read it first. Let's see what it
22 says. It says here, 'I was going to stop at the bank, but I
23 did not. I forgot it.' Is that what it says?

24 A. That's what it says.

25 Q. Now as long as we are in this statement, let's get
26 one other thing straight. Now you told the ladies and
27 gentlemen of the jury that you actually got a call from your
28 wife?

29 A. That's the reason I--

Charles Collins - CROSS (As read)

1 Q. --that told you that you had to go by, that said
2 you had to go by Don Mitchell's; is that correct?

3 A. No, that is not correct. That's the reason I
4 turned down Church Street. I got a call from my wife as I
5 turned up toward the bank right there, and Church Street was
6 the nearest way to go to Wal-Mart. I turned down Church
7 Street, and I went down Church Street to Wal-Mart.

8 Q. That is after your wife called you?

9 A. That's exactly right.

10 Q. Okay, well, just read on a little bit more there
11 to yourself, Mr. Collins, and you see, and read on a little
12 bit further down there and read to the next two lines, and
13 then I have a question to ask you."

14 A. (Transcript reflects Pause while witness reads.)

15 Q. "When you are finished, please let me know.

16 A. All right.

17 Q. Here it doesn't say that you got a phone call from
18 your wife. What it says, 'When I got in, my wife told me
19 that Don Mitchell had called and said I had the wrong spark
20 plugs to go in the car.' Isn't that what it says?

21 A. That's what it says.

22 Q. And so what they are saying there is that when you
23 got in and they were talking about getting into your house;
24 isn't that right?

25 A. That's right, but my wife had already called me.
26 When I come back by the house, she mentioned about me having
27 the wrong spark plugs.

28 Q. Before you told us that your wife called you to
29 tell you you had the wrong spark plugs. Now--

Charles Collins - CROSS (As read)

1 A. --That's just what I told you.

2 Q. Now you are telling us that what happened is that
3 you got into your house, and then your wife told you?

4 A. No, my wife called me, and she didn't know that I
5 had went and picked up the spark plugs and brought them down
6 to Don Mitchell's. And when I went back by the house to pick
7 that stuff up, she told me, said Don Mitchell called and
8 said, talking about the spark plugs. That's what, that is
9 what this is all about right here.

10 Q. All right, well, so what happened despite the fact
11 that at one point you said you got a call from your wife;
12 what happened is you got in-- you went all the way back to
13 the house, and then she told you you had to get the spark
14 plugs?

15 A. I got a call from my wife on my car phone telling
16 me that I had the wrong spark plugs. I went to the Wal-Mart
17 and swapped the spark plugs and brought them to Don
18 Mitchell's. When I come back, my wife stuck her head out of
19 the shop door as I was getting those papers, and she said,
20 'Don Mitchell called about those spark plugs. Did you do
21 anything about it?' I told her yeah, I had already taken
22 care of that, and I was on my way to the bank then.

23 Q. Okay, well, see read what it says. Okay, let's
24 read what it says here, okay?

25 A. Okay.

26 Q. It says, 'I went on back to the house.' And
27 that's after you had been downtown the first time and didn't
28 pay, didn't pay, didn't get the stuff out of the cleaners and
29 didn't go by the bank; isn't that right?

Charles Collins - CROSS (As read)

1 A. That's correct.

2 Q. Okay, then it says, 'I was going to stop at the
3 bank, but I did not. I forgot it.' That's what it says;
4 right?

5 A. When I got the telephone call, I forgot about it.
6 I turned down Church Street and went to Wal-Mart.

7 Q. It doesn't say anything about a telephone there,
8 does it?

9 A. I am trying to explain it to you, but that's--

10 Q. --Okay, why don't we keep reading. Let's see if
11 that's when you went to Wal-Mart. 'I turned down Church
12 Street when I paid my gas bill.' Excuse me; excuse me. 'I
13 turned down Church Street, when I paid my gas bill, I turned
14 down Church there and went on to the house. When I got in,
15 my wife told me that Don Mitchell had called and said I had
16 the wrong spark plugs to go in the car.' Isn't that what it
17 says?

18 A. That's what it says.

19 Q. 'So I run down there and got those spark plugs and
20 to Wal-Mart and picked up a few spark plugs and run them down
21 there.' That's what it says there; right?

22 A. I wasn't reading. (Transcript reflects Pause
23 while witness reads.) That's what it says here.

24 Q. So what it is saying here in this statement is
25 that you got in; your wife told you you forgot the spark
26 plugs, and then you ran down to Wal-Mart. You got the spark
27 plugs, and then you ran them down to Don Mitchell; right?

28 A. I had already done that when--

29 Q. --Well, that is not what it says here, is it?

Charles Collins - CROSS (As read)

1 A. Well, that's what I had already done.

2 Q. And this is your statement. Actually this is your
3 taped statement, right? What you said yourself?

4 A. That's what it says here.

5 Q. Okay. Then it says, 'I stopped by my house. My
6 wife asked me, 'Did you get the dry cleaners?' And I said,
7 'No, I did not.' I said, 'I will go right now.' And that's
8 when you were on your journey to downtown; is that correct?
9 Back again downtown. You were going back--

10 A. --Yes, sir, the second time, yeah. After I went
11 and got the spark plugs, that's where I went, back downtown.

12 Q. Okay, now we are going to get to this map in a
13 minute. Let's just cover one other thing and get it out of
14 the way. Okay, look, now let me ask you this. You are
15 telling the ladies and gentlemen of this jury that first of
16 all, you went downtown and you first of all, for whatever
17 reason, went on Summit Street; is that correct?

18 A. That's the street you have got to go on to where I
19 was going.

20 Q. Okay. But well, actually you can go down
21 Applegate-- excuse me. You can go from your house. You can
22 reach the cleaners without ever touching Summit Street; isn't
23 that true?

24 A. No, I cannot.

25 Q. Can't you--

26 A. --Oh, Summit Street, yeah.

27 Q. Yeah. You don't have to go down Summit Street;
28 right? Because your house is, let me see. Your house is
29 from where Front Street is, you live on a street called Bell

Charles Collins - CROSS (As read)

1 Street; is that correct?

2 A. That's correct.

3 Q. Bell Street runs into Applegate; isn't that
4 correct?

5 A. That's correct.

6 Q. Or let's say 51 because that's what everybody
7 calls it, 51; right? Is that correct?

8 A. That's correct.

9 Q. 51 runs north and south; isn't that correct?

10 A. That's correct.

11 Q. And from where the cleaners is to your house, is
12 that north or south? Is your house north or south of the
13 cleaners?

14 A. My house is south of the cleaners.

15 Q. Your house is south of the cleaners; that's
16 correct; right? And what you have to do in order to get to
17 the cleaners the way you went, you had to go down Applegate,
18 turn on Summit which is actually, which is actually north of
19 Tardy's and north of the cleaners; isn't that correct? You
20 have to-- strike that. You first of all had to come from
21 Bell up Applegate going, you were, in fact, traveling-- your
22 house is north of the cleaners?

23 A. It's south of the cleaners.

24 Q. South. Okay, you were traveling north. You had
25 to go north; is that correct? Is that right?

26 A. Uh-hum.

27 Q. And then what you had to do is go all the way from
28 the southerly direction that you were coming from north all
29 the way to what you call Summit Street. Is that correct?

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED

1471-1620

VOLUME

18 of 21

EXHIBIT

ELECTRONIC DISK

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Charles Collins - CROSS (As read)

1 A. That's correct.

2 Q. And Summit Street is north of the cleaners; isn't
3 that correct?

4 A. It's north of cleaners.

5 Q. So what you had to do is go from your house which
6 is south to a street which was north, turn on that street
7 that was north, and then go back south in order to get to the
8 cleaners. Isn't that correct?

9 A. If I went that way, it is.

10 Q. And that's the way you say you went; right?

11 A. That's the way I went.

12 Q. And if you didn't go that way, then you wouldn't
13 have seen two men. Isn't that correct?

14 A. That's correct.

15 Q. Because actually if you would have went down
16 Church Street, you could have gone down Church Street; isn't
17 that correct?

18 A. I could have, yes.

19 Q. Okay, and what you could have done at a certain
20 point is actually turned on a street which is called
21 Carrollton off of Church Street. Isn't that correct?

22 A. I don't even know where Carrollton Street is in
23 Winona.

24 Q. Carrollton is the street that runs right alongside
25 the cleaners. You went to the cleaners--

26 A. --Well, I could have turned down through there,
27 yeah.

28 Q. And you never would have had to even reach Summit
29 Street. You would have never had to go that far north; isn't

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APR 14 2004

Charles Collins - CROSS (As read)

1 that correct?

2 A. I would have had to have connected to Summit
3 Street-- I mean to the Main--oh, no. That is Summit Street.
4 No, that is Main Street. Yeah, that's right. You are right.

5 Q. That's right. Well, let me see if I am right.
6 Let me see if I am right here. I am showing you a map which
7 is now marked as Defendant's Exhibit for identification
8 purposes. On this map this is Applegate which is 51; isn't
9 that correct?

10 A. That's correct.

11 Q. Your house is somewhere off to the left of the
12 map; isn't that correct?

13 A. My house is right here on this map.

14 Q. Okay. Which is off to the left; right?

15 A. That's right.

16 Q. And what you had to do in order to go down
17 Applegate, what you had to do is go down Applegate here;
18 right? All the way to what we see here is Summit Street;
19 isn't that correct?

20 A. That's correct.

21 Q. And what you're doing is you are going all the way
22 north here, and you are turning down Summit; right?

23 A. Uh-hum.

24 Q. And then you have got to go all the way down
25 Summit here until you get to Front Street; right?

26 A. That's right.

27 Q. Then you have got to turn right again going back
28 south; right?

29 A. That's right.

Charles Collins - CROSS (As read)

1 Q. And then you get to the cleaners?

2 A. Right.

3 Q. Once you pass Tardy's; right?

4 A. That's right.

5 Q. But if you don't go that way, what you can do is
6 you can go down this street here. What is this street here?
7 It has got a street called 407; is that correct?

8 A. Yeah, that is a highway.

9 Q. Okay. And you also have Church Street here;
10 isn't that correct?

11 A. That's right.

12 Q. You can hit Church Street from your house, can't
13 you?

14 A. Oh, I could have hit any of these streets down
15 through here and went up through there.

16 Q. And Church Street goes down here, and it hits
17 Carrolllton; isn't that correct? It hits Carrolllton south of
18 the cleaners; right?

19 A. That's right.

20 Q. And then what you can do is turn on Carrolllton,
21 and you would just be right there at the cleaners; right?

22 A. I could have, yeah.

23 Q. In fact, the third time you went downtown that's
24 how you went; right?

25 A. The third time I went downtown I went up Church
26 Street, that's right, because that was after all this had
27 happened. And I turned down Carrolllton Avenue and didn't get
28 to go to the cleaners then because they had the streets
29 blocked off.

Charles Collins - CROSS (As read)

1 Q. I understand. But the third time you went
2 precisely the way that I said that you could have went the
3 time that you claim you passed Tardy's; right?

4 A. I could have.

5 Q. And you would never have passed Tardy's; right?

6 A. Right. But I wasn't in any hurry.

7 Q. And on 51, they have lights?

8 A. Yeah, and on Church Street they have cars parked
9 on both sides of the road, the four way stop and all this
10 stuff. You have to wait for people to cross the highway. It
11 takes you a whole lot longer too.

12 Q. Okay but anyway, now your testimony is that for
13 whatever reason, you went all the way to Summit, went down
14 turned on Summit because you weren't going, you didn't stop
15 anywhere on Summit, did you? The second time you went down?

16 A. Yes, I did.

17 Q. The second time you went down to the, you went
18 down--

19 A. --yeah, because they have got a stop sign there,
20 and I stopped at that stop sign.

21 Q. What I mean is did you stop and get out of your
22 car?

23 A. No, I did not.

24 Q. So you turned on that street which was, now we
25 know is Front Street. That's the street that runs in front
26 of Tardy's; is that correct?

27 A. It's Front Street or Main Street, ever what it is,
28 ever what that street is.

29 Q. When you turned on the street that runs in front

Charles Collins - CROSS (As read)

1 of Tardy's, you are telling us that you were driving past; is
2 that correct?

3 A. That's correct.

4 Q. And you saw two men is what you told me?

5 A. That's correct.

6 Q. And you saw these two men. They were two black
7 men; is that correct?

8 A. That's correct.

9 Q. And they were at an old brown car; is that
10 correct?

11 A. They were-- I have trouble with browns and greens,
12 but it was a brown, beige, tan or ever what it is, it was
13 real dirty, real filthy.

14 Q. And that's what you have indicated before; is that
15 correct?

16 A. That's correct.

17 Q. Now this is after you have, this is at the end of
18 your journey coming from Wal-Mart which you had to go all the
19 way down to Don Mitchell all the way back to your house and
20 all that kind of stuff; right?

21 A. That's correct.

22 Q. And then you are coming down that street, and you
23 see two men and you say they were walking across the street.
24 Is that correct?

25 A. No, I did not.

26 Q. Okay, where were they walking?

27 A. They were standing in front of-- one was standing
28 in front of the car, and one was standing beside the car.

29 Q. And I think you told these ladies and gentlemen of

Charles Collins - CROSS (As read)

1 the jury that they were fixing to fight. You thought they
2 were fixing to fight?

3 A. I did not. I told these, they acted, I said they
4 act like they was fixing to fight. They act like they were
5 arguing.

6 Q. So they--

7 A. --That's what brought my attention. If they
8 hadn't have done that, I probably never would have seen them.

9 Q. Well, actually what you said initially back when
10 you wrote your statement and you testified in other hearings
11 is that one of the men made a gesture with his hands. Isn't
12 that what you said?

13 A. Made a gesture with both hands.

14 Q. Well, but nobody hit anybody; right?

15 A. That's what I said.

16 Q. Okay, there were no blows passed; is that right?

17 A. If there was, it was passed while I made that
18 circle where I couldn't see.

19 Q. There was nothing fantastic happened; isn't that
20 correct?

21 A. (Transcript reflects no response.)

22 Q. There was nothing fantastic that happened; is that
23 correct?

24 A. No, because I had to go around and make the block
25 to come back up before I could see them again.

26 Q. But you only saw the face of one man; right?

27 A. That's correct.

28 Q. And you only got a glimpse, a very brief glimpse
29 of that face; right?

Charles Collins - CROSS (As read)

1 A. I looked at him just like I am looking at you, and
2 that was it.

3 Q. You got a brief glimpse; is that right?

4 A. That's right.

5 Q. Because you said in your statement that you only
6 got a brief glimpse; is that right?

7 A. That's what I just told you.

8 Q. And were you driving at the time; right?

9 A. That's correct.

10 Q. And you only got-- and that is the only time that
11 you ever saw that man's face; isn't that right?

12 A. That's correct.

13 Q. And you didn't see that man's face. The
14 prosecutor said you went down and circled and came back. You
15 did, according to you, you did go down and circle and come
16 back?

17 A. That's correct.

18 Q. But you didn't see that man's face when you came
19 back, did you?

20 A. No, I did not.

21 Q. So the only time in life because you had never
22 seen that man's face prior to that time; isn't that correct?

23 A. Well, I don't know. I live in Winona there. I
24 could have. If I told you I hadn't, I may be lying to you.
25 If I told you I had, I may be lying to you.

26 Q. As far as you know--

27 A. As far as I know. You know, I just seen him just
28 that, just like I told you.

29 Q. As far as you know, you just got a brief glimpse?

Charles Collins - CROSS (As read)

1 A. I did not know him. Let's put it this way.

2 Q. As far as you know, you didn't know the man's
3 face; is that right?

4 A. I did not know the man. No, I did not.

5 Q. So what you did, as far as you know, that was the
6 first time in life, as far as you know, the first time in
7 life you have seen the person; right?

8 A. Yes, that was.

9 Q. Was a brief glimpse; right?

10 A. That's right.

11 Q. And now we sit here, I mean how many years later?
12 What is this? This is '96; is that right? And you are
13 identifying a person that you saw back in '96 with a brief
14 glimpse that you had never seen before in your life; is that
15 correct?

16 A. I picked out a picture out of a lineup just a
17 short time after that.

18 Q. Well, actually you picked out a picture out of a
19 lineup about a month after that; isn't that correct?

20 A. Well, I don't know exactly when it was, but it was
21 shortly after that.

22 Q. A month after that; right?

23 A. I don't know. I couldn't tell you that.

24 Q. Okay, could it have been a month?

25 A. It could have been a month; it could have been a
26 week. I don't know.

27 Q. Okay, but well, let's see what your statement says
28 because I think your statement actually tells us when you saw
29 that." ... "It says, "Porky, I think on August 24, 1996,

Charles Collins - CROSS (As read)

1 Wayne Miller with the Highway Patrol and myself showed you a
2 picture line-up, showed you" actually two line-ups. Is that
3 what it says?

4 A. That's right.

5 Q. So that is a month after the incident; right?

6 A. Just like I told you, I didn't tell you that. I
7 didn't know.

8 Q. So you were identifying a person in a picture
9 lineup a month after this had occurred?

10 A. I described the man." ...

11 Q. "Okay, you did not make any kind of
12 identification, were never even asked to make an
13 identification until a whole month after this incident; isn't
14 that correct, according to this paper?

15 A. I guess. If that's what it says.

16 Q. And you were trying to tell me that you described
17 the man on the day of the incident. That is what you were
18 going to tell me?

19 A. That's correct.

20 Q. And your description of the man on the day of the
21 incident, actually you didn't describe the man. You
22 described two men; is that correct?

23 A. No, I did not.

24 Q. The only description you gave, and you gave it to
25 the officers, is that it was two black males with medium
26 complexions. That's all you said; right?

27 A. I told, what I told them about the complexion was
28 I said the one I seen's face had a complexion of Chief Johnny
29 Hargrove. I said his complexion was like Chief Johnny

Charles Collins - CROSS (As read)

1 Hargrove. Now if that is medium complexion, I don't know.

2 Q. What date is that?

3 A. 7/16.

4 Q. And what is that name up there?

5 A. Porky Collins.

6 Q. What does it say here?

7 A. --two black males. That is not my writing--"

8 (Mr. Blackmon continued reading a portion of what
9 Mr. Evans had said at the prior hearing as follows:)

10 A. "What somebody else's notes are. This"-- ...

11 Q. "Were the officers taking notes?"

12 A. They were all sitting at the table there.

13 Q. Well, Mr. Collins, please. Just answer my
14 question and then you can talk about anything. Were the
15 officers taking notes?

16 A. I assume they were.

17 Q. Okay. And you don't know why an officer would
18 just put down two black males with medium complexion if you
19 gave them a complete description, do you? Do you know why?

20 A. No.

21 Q. Now in any event, when you were trying to
22 identify-- you were trying to identify a man a month later
23 who you had only seen with a brief glance on one day while
24 you were riding past; is that correct?

25 A. That's correct.

26 Q. You didn't have any reason to believe that anybody
27 had been hurt in any kind of way; right?

28 A. When?

29 Q. On the 16th when you saw these two black men?

Charles Collins - CROSS (As read)

1 A. No, I did not.

2 Q. And in fact, you had no reason to believe-- what
3 you said is they made a gesture, and they were arguing and
4 you thought they might fight; right?

5 A. That's correct.

6 Q. You only saw the man from the back of the head
7 when you came back; right?

8 A. As I came back, yes.

9 Q. And you didn't see the man doing anything except
10 walking away from the car when you came back; isn't that
11 right?

12 A. They was going across the street.

13 Q. Didn't have any guns in their hands, either one of
14 them?

15 A. I didn't see them. I couldn't see their hands
16 because of the way the car was.

17 Q. Well, you saw their hands when they made the
18 gesture; right?

19 A. I seen one of them's hands when he made the
20 gesture and seen the other one as he was up against the car.

21 Q. The one's hands that you saw that made the gesture
22 was the one who you saw his face with a brief glance; isn't
23 that correct? The one who made the gesture is the same one
24 that you took the brief glance at his face; isn't that
25 right?

26 A. The one on the hood was the one that was making
27 the gesture with his hands.

28 Q. And that's the one who you saw his face?

29 A. That's the one I saw his back.

Charles Collins - CROSS (As read)

1 Q. Okay, you never saw that person's face; right?

2 A. No, I did not.

3 Q. Well, you didn't see any kind of weapons or
4 anything on either one of them that would have drew your
5 attention; is that correct?

6 A. No, I did not.

7 Q. Now actually the two people you saw, according to
8 you, you actually saw them headed in the direction of Coast
9 to Coast; is that right?

10 A. No, it was not. They was headed sort of at an
11 angle toward Tardy Furniture. It was up around almost at the
12 Keystone Alley, I believe is what they call it there, but
13 they were headed across the street there.

14 Q. Mr. Collins, is it not true that you have
15 testified on many occasions that actually the men, first of
16 all, were not actually parked. The car was not actually
17 parked directly in front of Tardy's, was it?

18 A. No, it was not.

19 Q. It was actually parked north of Tardy's?

20 A. It was a little bit more, yeah. It was up about
21 where that alley, a little bit, right about where that alley
22 is there, yeah.

23 Q. And your previous testimony, was it not, that when
24 the men turned and walked away from you, they were walking
25 north. They were turning and going north; isn't that
26 correct?

27 A. They were turning going across the street.

28 Q. North across the street?

29 A. No. If you go across the street there, I think

Charles Collins - CROSS (As read)

1 you are going to be going west.

2 Q. Northwest; right?

3 A. I think if you are going straight across that
4 street, you are going to be going west.

5 Q. Okay, well, let's go back to the transcript.
6 Well, before we get to the actual direction. I am showing
7 you again what is now marked for Defendant's Exhibit number 4
8 for identification purposes. I ask you to please read toward
9 the top of the page and read the-- you can read anything else
10 you would like, but I am pointing to the line where it says,
11 it starts talking about the men and the fact that you saw
12 them for a split second. And then go down to the place where
13 it talks about which direction they turned in, which
14 direction the man turned in. Could you go over that by
15 yourself, and then when you get finished, please let me know.
16 Top of the page on page two of the statement.

17 A. All right.

18 Q. Ready?

19 A. Uh-hum.

20 Q. Okay. You indicated here, didn't you, 'I happened
21 to see these two black men. One of them was standing in
22 front of the middle of the hood' and 'he had both hands on
23 the hood. The other was standing at the door of the car with
24 one hand on top of the car and one hand on the door of the
25 car. He made a gesture with his hand. If it had not been
26 for that, I probably would not have noticed it.' Is that
27 correct?

28 A. That's correct.

29 Q. Putting it in context, we know where we are at.

Charles Collins - CROSS (As read)

1 A. That's right.

2 Q. 'I just for a split second, I got a glimpse.'

3 Split second is what it says here; right?

4 A. Uh-hum.

5 Q. 'I got a look at him. I went on down. Instead of
6 stopping at the cleaners, I turned and went back up the
7 street. I guess I was being nosy...to see what was going on.
8 They were acting like they were sort of arguing a little bit.
9 I got back up almost even with the car. I could see them but
10 I could not tell that much about them because there were cars
11 parked there and the trees were right there by the car.'
12 That's what you said; right?

13 A. That's correct.

14 Q. So when you came back around and you couldn't tell
15 anything about them anyway; isn't that right?

16 A. All I could see was the back part of them, yes.

17 Q. And the one in the front of the car made a turn to
18 the north?

19 A. That's correct.

20 Q. The north would be toward Coast to Coast; right?

21 A. North would be up that street-- he had to turn
22 north and then he turned west going across the street.

23 Q. And he was already a bit north of Tardy; right?

24 A. Just a little bit, yes.

25 Q. So if he went north and he was already north of
26 Tardy's, he couldn't have been going toward Tardy's, could
27 he?

28 A. Well, the two cars that was parked right side by
29 side right there would--

Charles Collins - CROSS (As read)

1 Q. --Excuse me. Answer my question. If I am north
2 of something and I go further north, I can't be going toward
3 the thing that I was north of already; isn't that right?

4 A. Well, there was no other parking places down
5 there.

6 Q. If I am north of Tardy's, Mr. Collins, and then I
7 walk further north of Mr. Tardy, of Tardy's, I can't be
8 walking toward Tardy's, can I?

9 A. Yeah, he turned north there just--

10 Q. Mr. Collins, answer my question. Here it says he
11 was-- you already told us he was north of Tardy's; right?

12 A. That's correct.

13 Q. And here it says he then walked north of Tardy's
14 again; right? It says he walked north of where he was.
15 That's what it says. He turned and walked north. Isn't that
16 what it says?

17 A. He headed north, yeah.

18 Q. 'I never seen his face, and all I seen was more or
19 less from the back of him, every time I seen him.' Is that
20 right?

21 A. That's right." ...

22 (The reading of the transcript continued with the
23 Continued Cross Examination of Mr. Porky Collins on the
24 following day.)

25 BY MS. FERRARO:

26 Q. "Good morning, Mr. Collins.

27 A. Good morning.

28 Q. Just to put this quickly in context, Mr. Collins,
29 and then to, of course, move on, you took two trips, I keep

Charles Collins - CROSS (As read)

1 saying downtown, but it is really like uptown or in town; is
2 that right?

3 A. That's right.

4 Q. Okay, and this is, and on these first two trips in
5 town you had four purposes as I understand it from your
6 testimony to this point. You were supposed to be, from what
7 you have told this jury, you were supposed to be going to the
8 bank, and you were going to be going to the post office. You
9 had to pay a gas bill, and you had to go to Hunger's Dry
10 Cleaners; is that right?

11 A. That's correct.

12 Q. And with two of the trips to town and between
13 these two trips to town, for whatever reason, you never got
14 your clothes from the cleaners; is that correct?

15 A. That's correct.

16 Q. And the first time you went down, as I understand
17 it, you didn't go to the cleaners because it was too many
18 cars there; is that right?

19 A. That's correct.

20 Q. However, you did leave town and still didn't have
21 the clothes; is that correct?

22 A. That's correct.

23 Q. And the second time at some point you had to go
24 back. You had to go back for money; is that right, because
25 you didn't have money for the cleaning?

26 A. That's correct.

27 Q. And you were going to the bank, and you forgot to
28 go there; is that correct, or at least that's what it said in
29 your statement that we read; is that right?

Charles Collins - CROSS (As read)

1 A. Well, I didn't forget to go by. I had, I left some
2 papers at home.

3 Q. But in your statement that we read, it said that
4 you forgot to go there; is that right? The one we saw
5 yesterday?

6 A. I--

7 Q. We don't want to spend too much time on it because
8 we have been through it, but let me just show it to you here.
9 'I was going to stop at the bank, but I did not. I forgot
10 it.' Is that right?

11 A. Well, that's what it has on here.

12 Q. Okay. Now and then actually you went downtown
13 twice and never went to the bank; is that correct?

14 A. That's correct.

15 Q. And in fact, the second time or at least the second
16 time you had forgotten some papers; is that correct?"

17 ...

18 A. "That's correct."

19 Q. "And you know you live on Bell Street; is that
20 correct?"

21 BY MR. DE GRUY: The bottom of 1657.

22 BY MS. FERRARO:

23 Q. "All right, I'm showing you, I'm showing you D-9.
24 Okay, do you see there on D-9; do you see 51 which is right
25 here on the map; is that correct?

26 A. That's correct.

27 Q. And you know you live on Bell Street; is that
28 correct?

29 A. Right there. That's correct.

Charles Collins - CROSS (As read)

1 Q. Bell Street. Do you see where the "C" is?

2 A. That's right.

3 Q. And your name is Collins, your last name?

4 A. That's right.

5 Q. Now Mr. Collins, if I understand it correctly, the
6 route that you took the second time you went downtown to
7 reach, to pass in front of Tardy's is a route which started
8 where you live, went up here on Applegate, 51, proceeded down
9 to Summit Street, and then-- in other words, came from the
10 south, went north, passed the spot where-- well, you went up
11 north to Summit, turned right on Summit, and then had to come
12 all the way down to the street here which is called Main or
13 Front. Is that correct?

14 A. It's one or the other. I can't remember which
15 street it is called. It's, I think it's Front Street.

16 Q. Front Street, okay. So when you said Main Street,
17 what you would have been talking about is Front Street?

18 A. Is this Front Street.

19 Q. And then what you did you turned right on that,
20 and you passed by Tardy's according to what you told us, and
21 you were headed towards the cleaners; right?

22 A. That's correct.

23 Q. And the cleaners was right here on the corner of
24 the street called Carrollton and Front Street; is that
25 correct?

26 A. It's that last street. I think that is the name
27 of that street. I'm not real sure.

28 Q. Okay, but in any event so this would be pretty
29 much the route you took where it is marked here. Is that

Charles Collins - CROSS (As read)

1 correct?

2 A. That's correct.

3 Q. Okay. And you would have had to go from north to
4 south to pass Tardy's; right?

5 A. That's correct.

6 Q. Now there is another route which is certainly a
7 lot shorter, and this is where you live"-- ... "And it would
8 be safe to say -- so what we are going to do is we are going
9 to write up here, 'Route taken by Mr. Collins.' And we are
10 going to draw an arrow to that; okay? Is that all right?

11 A. (Transcript reflects No audible response.)

12 Q. Route 51 is the route you took; is that correct?

13 A. I started here and went up.

14 Q. Okay, we will draw the arrow here too; okay?

15 A. Okay.

16 Q. And then you wound up down here someplace; right?
17 So we have the route, draw the arrow here too; okay?

18 A. All right.

19 Q. Okay. Now the shorter route, here is Bell Street;
20 correct?

21 A. That's right.

22 Q. You could have driven up to 51, turned right and
23 gone right here to this street which is called Simpson
24 Street, Simpson Drive; is that correct?

25 A. That's correct.

26 Q. And you could turn right on Simpson Drive and
27 really go right to Church Street; isn't that right?

28 A. That's correct.

29 Q. And then from Church Street all you have got to do

Charles Collins - CROSS (As read)

1 is drive straight on into town; isn't that correct? And hit
2 Carrollton right here before you even get north. You hit
3 Carrollton right here on the south side of Tardy's; is that
4 correct?

5 A. That's correct.

6 Q. And then you could turn right and go right here to
7 the cleaners which is right there south of Tardy's. Is that
8 correct?

9 A. That's correct, but my main objective was going to
10 the bank first.

11 Q. Oh, okay. You were going to go to the bank first.
12 Is that what it was?

13 A. That's right.

14 Q. But in any event, this is a short route, okay.
15 You agree with that; right?

16 A. I don't know. I couldn't tell you.

17 Q. Okay, could we call it other route? Do you want
18 to say other route?

19 A. I couldn't tell you whether it was shorter or not.

20 Q. We will just put "Other route"?

21 A. It could be. I don't know.

22 Q. And this is Exhibit number 9. We are going to
23 move on here. And we will pass this to the jury at a
24 different point in time so we don't delay things. Okay, now
25 let me ask you this. And so when you were taking this route,
26 now you said you were going to the bank, but actually you
27 never got to the bank; is that correct?

28 A. That's correct.

29 Q. So now the thing that, because you went this

Charles Collins - CROSS (As read)

1 route, you were going past Tardy's and you saw two men, I
2 think is--

3 A. That's correct.

4 Q. And the, you saw a car and you have previously
5 testified that the car was brown. Is that previously what
6 you said, that the car was brown? Isn't that correct?

7 A. Brown, beige, or tan. I told you I have color,
8 difficulties with brown.

9 Q. You have problems, kind of color blind? Is that--

10 A. With browns and greens.

11 Q. And the car was dirty and dusty?

12 A. It was real dirty and dusty; yes, sir.

13 Q. And these two men, we had a little discussion
14 yesterday about what direction they were in. But you have
15 had an opportunity to-- well, first of all, let's go. You
16 have previously stated in your first statement that the man
17 at the door is the one that made the hand gesture. Didn't
18 you tell us that in that statement? The statement to the
19 police, didn't you tell them that the man at the door was the
20 one that made the hand gesture?

21 A. He made a hand gesture back to the one on the
22 front of the car. The one on the front of the car was the
23 one that was making the hand gestures when I first noticed
24 it.

25 Q. Oh, okay. So I understand that both of them were
26 making hand gestures; right?

27 A. Right. The one that was at the door made a
28 gesture back at him, and that's when I went on down the
29 street. I just barely got a glimpse of that.

Charles Collins - CROSS (As read)

1 Q. You just barely got a glimpse of that, and that
2 was when you saw somebody's face; is that correct?

3 A. That's correct. No, I had seen the face before
4 the man at the door made the hand gesture.

5 Q. Okay, well, let me ask you, but you weren't paying
6 any attention. What made you notice was that somebody was
7 making a hand gesture; right?

8 A. That's correct.

9 Q. Okay, so other than the fact that they made the
10 gesture, you wouldn't even have paid any attention to it;
11 right?

12 A. I probably never would have seen them; yes, sir.

13 Q. So it was just like anybody else you are passing
14 downtown.

15 A. That's correct.

16 Q. No particular reason to look at them?

17 A. That's correct.

18 Q. And in fact, you said that these cars, the car was
19 all the way on the other side of the street near the railroad
20 tracks. When I say near the railroad tracks, one part of the
21 street you can park which is closest to the railroad tracks;
22 is that correct?

23 A. This car was parked in the middle of the street
24 on-- you park on both sides of the street.

25 Q. Okay.

26 A. And it was parked on the other side of the-- where
27 you park next to the furniture store there, it was parked on
28 the other side of the street, facing the cars that parks on,
29 they were together.

Charles Collins - CROSS (As read)

1 Q. Okay, they were, were they facing-- was the car
2 facing the side with the railroad tracks?

3 A. No, sir.

4 Q. Okay. Because the railroad tracks is the side of
5 the street which is the furthest away from Tardy's; isn't
6 that correct?

7 A. That's correct.

8 Q. And they were on the other side facing the side--
9 when I say other side, we are talking about the other side
10 from Tardy's. They were on the other side facing the side
11 with the railroad track. Is that a true statement?

12 A. Would you ask that again.

13 Q. Maybe, this is perhaps a point of confusion here.
14 There is this thing in the middle of the street; right?

15 A. That's correct.

16 Q. What we might called an island or something like
17 that?

18 A. Yeah, and it has got some trees planted on it.

19 Q. Let's call it an island for lack of a better word,
20 okay. So they were on the opposite side of the island than
21 Tardy's; would that be a true statement?

22 A. That's true.

23 Q. So in other words, between where that car was and
24 where Tardy's was, there is an island, and then that was
25 where the car was; is that correct?

26 A. That's correct.

27 Q. Parked up against the island where the trees is?

28 A. Well, it wasn't right in front of a tree, but it
29 was right beside a tree there, you know.

Charles Collins - CROSS (As read)

1 Q. I understand. And we have already established
2 that this was-- okay, well, we are going to establish in a
3 minute. And so in any event, you were on the side of the
4 street closest to Tardy's; is that correct?

5 A. That's correct.

6 Q. Okay. And but for this gesture, you would not
7 have looked. Now as far as the, this glimpse that you took--
8 now let me just see. So when you took the glimpse, you saw
9 two men making-- now this was a split second glimpse. Is
10 that correct?

11 A. That's true.

12 Q. That's the way you described it. A split second
13 glimpse; is that right?

14 A. Yeah, just like me looking at you and turning
15 away.

16 Q. Turning away. And in that split second glimpse
17 you saw a car; right?

18 A. I saw several cars.

19 Q. But you saw that car?

20 A. That car, yeah.

21 Q. You saw two men?

22 A. Correct.

23 Q. You saw hand gestures?

24 A. Correct.

25 Q. And you saw-- so during all this time that you
26 were looking, you actually weren't just focused on one thing.
27 You saw a car, two men standing in two different spots; is
28 that correct?

29 A. I really wasn't paying any attention to the car.

Charles Collins - CROSS (As read)

1 I just seen the car. What I was paying attention to was the
2 two men making the gestures. That's, you know, that's what
3 got my attention.

4 Q. You paid enough attention to the car to describe
5 it as a brown or beige car, a Pontiac or a Chevrolet. Didn't
6 you describe it that way?

7 A. I told them when I got behind the car--

8 Q. --Excuse me. Excuse me. Just answer my question;
9 then you can explain.

10 A. No, I did not at that time.

11 Q. Okay, you never said it was a Pontiac or a
12 Chevrolet?

13 A. Not at that time.

14 Q. Okay. Did you tell them that it was a brown car,
15 that it was dirty and dusty?

16 A. Not at that time, no.

17 Q. Did you later on tell them it was dirty and dusty?

18 A. I did.

19 Q. Did you later on tell them it was a Pontiac or a
20 Chevrolet?

21 A. I told them that it was a brown car with the
22 taillights going all the way across the back. It looked like
23 a Buick, Pontiac or something, you know, looked like that.

24 Q. Buick, Pontiac, Chevrolet or something; right?
25 General Motors car; right?

26 A. Right. With the taillights all the way across the
27 back.

28 Q. Okay, and so you saw the car, whenever you
29 described it, doesn't make any difference. You saw it

Charles Collins - CROSS (As read)

1 sufficiently to say what group of cars you felt it in because
2 Buicks, Pontiacs, and Chevys, they all tend to look a little
3 bit alike, don't they?

4 A. That's correct.

5 Q. Okay. And you had it enough to give it a color
6 although you feel that you can't really say for sure because
7 you are kind of color blind on browns; right?

8 A. Browns and greens.

9 Q. On browns and greens?

10 A. Uh-hum.

11 Q. Okay. But then you also gave that, and you talked
12 about a taillight going all the way across; right?

13 A. That's correct.

14 Q. So for whatever the focus, you are only talking
15 about a split second glance anyway; right?

16 A. That's correct.

17 Q. So during this split second glance, you are trying
18 to look at-- you saw a man's face for actually what wounds
19 up-- you saw the face. You were looking at the car too;
20 right, at the same time? Same time?

21 A. No.

22 Q. Okay. Well, the whole view that you saw, what you
23 have just told us, it occurred in a split second glance;
24 isn't that correct?

25 A. That's true.

26 Q. Okay, so during that split second glimpse, you saw
27 a car was one of the things. I'm not asking you how long you
28 looked at it, but you saw it and you saw it enough to
29 describe it the way you described it. Isn't that correct?

Charles Collins - CROSS (As read)

1 A. Well, I got behind it. That's when I described
2 the car.

3 Q. Okay, you saw two men; right?

4 A. That's correct.

5 Q. You saw two men making gestures with their hands?

6 A. That's correct.

7 Q. Wasn't making gestures with their face; they made
8 gestures with their hands.

9 A. That's correct.

10 Q. So you had to watch their hands in order to see
11 the gestures; right?

12 A. That's correct.

13 Q. And then during that same split second glimpse is
14 the split second glimpse that you saw all these other things
15 that part of your attention for part of the split second
16 glimpse you saw a man's face; is that right?

17 A. That's correct.

18 Q. Now based on that split second glimpse, some month
19 later and actually I think we established by looking at your
20 statement that it was about August the 24th of 1996. Is that
21 correct? That's what the statement said.

22 A. I can't remember the date.

23 Q. But whatever, but we did see the date in the
24 statement yesterday?

25 A. That is correct.

26 Q. Whatever that said was correct?

27 A. Yeah.

28 Q. Assuming it was August the 24th, 1996, that is
29 actually more than a month after July the 16th; is that

Charles Collins - CROSS (As read)

1 correct?

2 A. That's correct.

3 Q. And just to also make this very clear, nothing
4 happened eventful with these men. In other words, you didn't
5 see a fight; right?

6 A. No, I did not.

7 Q. Okay, and then you circled back around, but I
8 think you have already told me in a previous hearing that
9 when the men walked away, they did absolutely nothing that
10 would draw anybody's attention. Is that correct?

11 A. That's correct.

12 Q. And we had a little trouble with this the other
13 day, but when the men walked away - and I was looking for
14 this yesterday and I couldn't find it, and let me share it
15 with you right now. Is after you gave your taped statement,
16 actually Mr. Johnson began to ask you questions; right? He
17 asked you questions?

18 A. Several of them asked me questions. I don't
19 really remember whether it was him or not.

20 Q. 1, 2, 3, 4, 5, 6. Now I'm going to read what this
21 says, and you stop me if I read it wrong. In fact, this is
22 an exhibit, I believe, or it's not an exhibit, but it is
23 marked for identification purposes. So I guess the
24 appropriate thing is to let you look at this one which is
25 Exhibit for identification D-8 for the record, Judge.

26 A. Is this on that day?

27 Q. Yeah.

28 A. That particular day?

29 Q. Yeah. Looking right here, okay. It says,

Charles Collins - CROSS (As read)

1 'Johnson: You said that when you last saw these people they
2 turned toward the store. Did you see them walk to the
3 store?' 'Collins: The only thing I done was I seen them
4 turn. They turned. The one in front of the car turned to
5 the north headed across the street and the other one closed
6 the door and headed that way. I went on up and made my
7 turn. Where they went from there, I have no idea. I really
8 didn't pay that much attention to it.' So in there what you
9 said is they went to the north. Is that correct?

10 A. That's correct.

11 Q. Okay. Now this is also something we weren't able
12 to locate quickly yesterday. But in your testimony at this
13 previous hearing on page 436. And this is on Charles
14 Collins at the top here; right? That's what it says here;
15 right?

16 A. Uh-hum.

17 Q. Okay, 'And which direction was he traveling the
18 last time you saw him?' 'I made the block around by Hunger's
19 Dry Cleaners, and I come back up. And when I come back up,
20 they had started' - they - 'had started across the street
21 sort of like in front of Coast to Coast there, which is up
22 from the Tardy's Furniture Company. That's the last time I
23 saw them.' That's what you said; right?

24 A. That's right.

25 Q. And we already know that Coast to Coast is north
26 of Tardy's; right?

27 A. Just a little bit north, yes.

28 Q. And this says they started up the street and, in
29 fact, the other thing we just read they started north;

Charles Collins - CROSS (As read)

1 right? It just said they did north; is that correct? The
2 first statement we just read?

3 A. I guess you can say, yeah, that is north.

4 Q. Yeah, well, north-- they were across the street
5 north of Tardy's, and they started north; right?

6 A. That's correct.

7 Q. Okay. And just to make sure that we have no
8 confusion about the fact they were actually walking away from
9 Tardy's, you have actually said that before, haven't you,
10 that they were actually walking away from Tardy's? You said
11 that; right?

12 A. They weren't walking directly toward Tardy's, no.

13 Q. Well, they were walking away from Tardy's as a
14 matter of fact, weren't they?

15 A. Well, they had to go between two cars.

16 Q. We are turning to a hearing which occurred just in
17 January of 1999. This is your name up here, Charles, and in
18 parenthesis they have Porky Collins; is that correct?

19 A. Right.

20 Q. Answer: 'They were headed across the street.'

21 Question: 'Right, and walking actually toward the side of
22 the street where Tardy's was; right?' Answer: 'That's
23 correct.' 'But actually walking away from Tardy's; right?'

24 Answer: 'That's correct.' 'And also walking away from the
25 car; is that correct?' Answer: 'That's correct.' Is that
26 what you said?

27 A. That's correct.

28 Q. So when you were called upon in August over a
29 month later to identify somebody, you were being asked to

Charles Collins - CROSS (As read)

1 identify somebody and you-- strike that. You had made it
2 very clear to the police officers that you had only got a
3 split second or part of a split second glimpse at one
4 person's face; is that correct?

5 A. I said I got a glimpse.

6 Q. At one person's face?

7 A. At one person.

8 Q. Not two?

9 A. That's correct.

10 Q. And so you never saw the other person's face;
11 right?

12 A. No, all I seen was his back.

13 Q. So when they were showing you a lineup, obviously,
14 they couldn't expect you to be trying to identify the person
15 that you had never seen; right?

16 A. That's correct.

17 Q. So what happened on this date over a month, what
18 is it, a month and ten days later when you are asked to make
19 this identification, you are shown pictures; is that correct?

20 A. That's correct.

21 Q. And when you are shown these pictures, first of
22 all, you are shown a set of pictures, and in that first set
23 of pictures that you saw -- by the way, were these pictures
24 black or white or were they colored?

25 A. I honestly could not tell you. I really don't
26 remember.

27 Q. Well, back in '97 your memory would have probably
28 been a little fresher; is that correct?

29 A. Probably, but I really don't, I really don't

Charles Collins - CROSS (As read)

1 remember whether they were black or white.

2 Q. Charles Collins, page 445, the 1997 hearing." ...
3 "First of all, Mr. Collins, the first set of pictures that
4 they showed you were pictures where you pointed to two of the
5 men in the picture photo and say that resembles the person
6 but the hairline is different; isn't that right? You pointed
7 to one and three in the photos and said that resembles the
8 person, but the hairline is different. Isn't that correct?

9 A. I think the words I said was that the complexion
10 is, you know, is similar.

11 Q. Okay.

12 A. But the hairline is different, yes.

13 Q. Then you pointed to a person and then you said
14 that that looks like the person or that, let me see. I don't
15 want to get your words--" ... "I'm talking about the first
16 picture show-up they showed you on that day, the first one
17 they showed you which had six people in it, okay. That's
18 what I'm talking about. That's the one I am talking about.
19 That's the one I want you to focus on, okay. And what you
20 said at that time -- now you see if, now you correct me if
21 this is not what you said when you looked at that first
22 photo. One and three resembles but the hairline was further
23 back. Then you pointed to six, and do you know a person by
24 the name of Doyle Simpson?

25 A. I didn't at that time.

26 Q. You pointed to Doyle Simpson's -- you know him
27 now; right?

28 A. I know him now, yeah.

29 Q. You pointed to his picture next; isn't that

Charles Collins - CROSS (As read)

1 correct?

2 A. I have no idea.

3 Q. And you said the hairline is like this. May have
4 appear, you said the person may have appeared a little
5 darker. That's what you said; right?

6 A. --I really don't, I really don't know about that.
7 I really don't know--" ...

8 Q. "Okay, here is my question. Did you in that
9 particular first lineup indicate in pointing to Doyle Simpson
10 that even though the picture appeared to be, that it could
11 have been a little lighter than the person, but that looked
12 like the person that you saw. Did you say that?

13 A. I cannot say, I cannot, I can't answer that. I
14 don't know.

15 Q. Didn't you, in fact, say that the shape of the
16 face was the same face; isn't that correct?

17 A. I could not tell you. I don't remember that.

18 Q. And then after saying, then didn't you say that
19 you weren't quite sure. Didn't you say that? That you had
20 pointed to Simpson, but you said you weren't quite sure?
21 Didn't you say that?

22 A. I don't know. I cannot remember saying that.

23 Q. But you know that they never asked you after you
24 pointed to that man, they never asked you at that time, 'Do
25 you know Doyle Simpson?' They never said that, did they?

26 A. I don't even remember anybody mentioning Doyle
27 Simpson to me.

28 Q. After that, they gave you a second lineup; is that
29 correct?

Charles Collins - CROSS (As read)

1 A. I was shown two lineups now.

2 Q. So they gave you a second lineup; is that right?

3 A. I think that's correct.

4 Q. Okay. I am showing you now what I'm going to ask
5 to be marked as a proposed exhibit." ... "After we go
6 through this, I'm going to come back and show you what I
7 believe to be a xeroxed copy of the first lineup you saw,
8 okay? But right now focus on that second lineup; is that
9 correct? Do you understand what I'm saying?

10 A. Okay.

11 Q. Is that okay?

12 A. Uh-hum.

13 Q. Okay. And I'm going to show you this, what is now
14 marked as Exhibit number 91, Exhibit number 91 and ask you if
15 you can identify this?

16 A. I remember these pictures. I don't know if these
17 are the same pictures or not, but I remember these pictures.

18 Q. Now are those pictures there in black and white or
19 are they colored?

20 A. They are colored.

21 Q. And were the pictures you saw color like those
22 pictures, or were they black and white?

23 A. I have seen pictures just like this. Now I can't
24 remember whether those were colored or black and white
25 pictures I saw the first time. I, I can't remember.

26 Q. Okay. Well, revisiting again here your testimony at
27 that hearing on page 449. You said at that time, didn't you,
28 'I believe the pictures I seen was black and white.'

29 Question: 'All right, so you don't know if that's the same

Charles Collins - CROSS (As read)

1 one or not?' because they were showing you these pictures
2 then at that hearing, weren't they?

3 A. I don't know if these were the same pictures or
4 not, but they was pictures like this.

5 Q. Okay, we can find out. But then after you said
6 all right or after they said, 'All right, so we don't know if
7 that's the same ones or not?' And then you said, 'This is
8 not the same ones. The pictures I seen were black and
9 white. Isn't that what you said there?

10 A. I believe I was shown some black and white
11 pictures. I'm not, I think, I want to, and I think I made
12 the remark that I couldn't, I couldn't tell much about them
13 because they were black and white.

14 Q. I see. So you didn't, you would have only signed
15 the pictures that you were shown. You wouldn't have signed
16 some other kind of pictures, would you?

17 A. I wouldn't hardly think so. I don't know. I
18 don't remember signing any pictures but one. One, I believe
19 that's the only one I signed. I remember signing one or
20 maybe two; I don't know.

21 Q. All right. Now in any event, those pictures
22 there, are those the ones you saw?

23 A. I don't know if these are the pictures, but I saw
24 some pictures like this.

25 Q. Now it would be safe to say that based on the head
26 shot of the person in number 4, his head looks totally bigger
27 than anybody else in these photographs. Isn't that correct?

28 A. That's correct.

29 Q. It stands out; isn't that correct?

Charles Collins - CROSS (As read)

1 A. It's bigger.

2 Q. And none of these are even approach that; isn't
3 that correct?

4 A. Not according to the size, no.

5 Q. And when you first saw those photographs, what you
6 said actually is you pointed to number 4, the place, the
7 person that we just looked at whose head stands out; isn't
8 that correct?

9 A. That's the one that I pointed to, but that is not
10 the reason I pointed to it.

11 Q. Okay, well, that is not what I'm asking you. But
12 that is okay though because you can always explain your
13 answer, so excuse me for even saying that. But in any event,
14 number 4 you now know is my client Mr.--

15 A. I do now.

16 Q. Okay. And you pointed to that one and you say
17 based-- and here again, you are looking at pictures -- you
18 have already looked at one set of pictures; is that correct,
19 at the time you are looking at this?

20 A. I really. I looked at two sets of pictures. Now
21 I don't remember that now.

22 Q. But the other set of pictures you have already
23 said that somebody in there looks like the person; isn't that
24 correct?

25 A. I said the complexion looked like.

26 Q. Okay. And you said the person looked like the
27 person, same round face and everything. Didn't you say that?

28 A. I don't remember saying that.

29 Q. Okay, well, we will see. But then at this point

Charles Collins - CROSS (As read)

1 you said to number 4, I think that is him. That is the first
2 words out of your mouth; right?

3 A. It may have been.

4 Q. Not that it was him, but you think it's him;
5 right?

6 A. It may have been.

7 Q. And then you go on to say, 'He was about my
8 height.' Is that correct?

9 A. I think so.

10 Q. 'The complexion is about right,' is what you said;
11 right, at that time? You said, 'The complexion is about
12 right'; is that correct?

13 A. I think so.

14 Q. Okay. Now keep that in mind that you said at that
15 time the complexion is about right. 'I believe that's him.'
16 'It looked like him,' is what you said; right?

17 A. I believe that's correct.

18 Q. Now unlike the other photos, then to somebody who
19 is showing you these pictures say, Do you know Curtis
20 Flowers? You remember being asked that question; right?

21 A. Yes, I was.

22 Q. And only after you are asked Curtis Flowers do you
23 make the statement, 'I know that is the person I saw outside
24 of Tardy's'; isn't that correct?

25 A. When they asked me if I knew Curtis Flowers, I
26 told them I did not know Curtis Flowers. I didn't never
27 even, didn't know he even existed in this world.

28 Q. Did you say at that point for the only time that I
29 know that is the person outside of Tardy's?

Charles Collins - CROSS (As read)

1 A. Would you rephrase that?

2 Q. Did you indicate after you were asked that
3 question that I know that's the person I saw out front of
4 Tardy's?

5 A. I never called him by name.

6 Q. Well, not by name but the picture. That you know
7 that is the person you saw outside of Tardy's?

8 A. That is the picture I picked out right there.

9 Q. Did you indicate only after you heard his name
10 that you know that is the person that you saw outside of
11 Tardy's? That is my question. If you remember; if you don't
12 know, it's okay.

13 A. I don't even remember if they had asked me if I
14 knew Curtis Flowers at that time. I really don't know.

15 Q. Very good. Now let me ask you this. So basically
16 during the course of this showing of these two different
17 spreads you actually pointed, you literally pointed to two
18 different pictures. You actually pointed to four, but to two
19 of them you were saying they were a little bit different.
20 You remember saying that the people were a little bit
21 different; one and three were a little bit different because
22 the hairlines were receding; right? You remember that;
23 right? If you do, if you don't--

24 A. --I don't remember saying that.

25 Q. Okay. But you remember pointing to a person you
26 now know as Doyle -- you say you don't remember whether it
27 was Doyle's picture, but you remember pointing to a picture
28 saying that that looked like the person?

29 A. I believe I said that it was the complexion looked

Charles Collins - CROSS (As read)

1 like him.

2 Q. So you pointed to two different people because you
3 had pointed to a second person; is that correct, when you
4 pointed to Mr. Flowers; is that right?

5 A. I think that is correct with the same answer.

6 Q. But you were only looking for one person; right?

7 A. That's right.

8 Q. There was no lawyer there for Mr. Flowers at the
9 time; right?

10 A. Not that I, not that I know of.

11 Q. There was no record made of what was actually said
12 to you or what was actually shown to you, no recorded
13 record. In other words, they were not recording that at the
14 time that it was being done; isn't that correct?

15 A. You know, I couldn't really tell you. I really
16 couldn't. I really don't know.

17 Q. Okay. I believe you previously told us, Mr.
18 Collins, remember that hearing we just had back in January.
19 I think you told us at that time-- well, let me ask you this
20 first. The day, we had a hearing in January about this same
21 issue, about identification, about you pointing to photos
22 and stuff. You remember that. It was January right down
23 here--

24 A. --that's right--

25 Q. --I believe"...

26 A. "That's correct.

27 Q. And at that particular time I asked you at that
28 time, I said, Mr. Collins, look. As Mr. Johnson-- now you
29 know Mr. John Johnson. He is the investigator for

Charles Collins - CROSS (As read)

1 prosecutor's office; right?

2 A. That's correct.

3 Q. And I was trying to see if he had talked to you
4 about the pictures, talked to you about your identification,
5 or suggested anything about it. You remember that; right?

6 A. That's correct.

7 Q. And I asked you at that hearing, I said, well, Mr.
8 Collins, did Mr. Johnson come by your house to discuss, you
9 know, the pictures with you? Did he come by your house and
10 discuss the pictures with you or the identification you made.
11 And you remember saying that you didn't remember or not that
12 you knew of, had Johnson been to your home or anywhere else
13 to discuss the pictures with you since the time that you were
14 originally shown them way back in '96. You remember saying
15 that; right?

16 A. I don't remember you asking me that question, that
17 particular question.

18 Q. Well, let us turn to that evidentiary hearing
19 transcript on page 80. From line 23, John -- that's his
20 first name; right? Is that Mr. Johnson's first name?

21 A. That's right.

22 Q. 'John has never come by to discuss the photos with
23 you?' Answer: 'Not that I know of.' Is that what you said?

24 A. That's exactly right. And you said to my address.

25 Q. Oh, so what you are saying is he came by to
26 discuss them with you, but he didn't come to your home? Is
27 that what it was?

28 A. No. He showed me the back of what I assume was
29 some pictures where I initialed them. I never seen the

Charles Collins - CROSS (As read)

1 pictures.

2 Q. Okay, well, he just showed you the back of a
3 picture and didn't even show you the front?

4 A. He pulled it out of the envelope and said, 'I just
5 want you to know these are the pictures that you looked at
6 because there is'-- and he says, 'Are these your initials?'
7 And I said yes.

8 Q. Well, it was initials-- now this, this is
9 interesting because I want you to tell the ladies and
10 gentlemen of the jury that what you are telling them is that
11 he actually came out here and showed you some initials
12 without even showing you what the initials were on? Is that
13 what you are saying?

14 A. Oh, I could have looked at them, but I didn't.

15 Q. Did he show them to you? Did he show--

16 A. --he showed--

17 Q. --put them out there so you could see the
18 pictures?

19 A. Yes, he did.

20 Q. And not only did he put them out there so you can
21 see the pictures; he did this at your home the day before the
22 hearing that I'm talking about; right? He came out to your
23 home the day before that?

24 A. That's correct. That's correct.

25 Q. And yet in the hearing that we were in, you
26 actually told me, and you were under oath at that time,
27 weren't you?

28 A. That's exactly right.

29 Q. And a person was taking notes just like this

Charles Collins - CROSS (As read)

1 person; right?

2 A. That's right.

3 Q. You are supposed to be telling the truth just like
4 you are supposed to be telling the truth now; right?

5 A. --In my opinion I told you the truth.

6 Q. But what you said was at that time, asked the
7 question, 'John has never come by to discuss the photos with
8 you? And you said, 'Not that I know of'; right?

9 A. That's what I said.

10 Q. That's the day after he came to your house, showed
11 you the back of the pictures, and then the front of the
12 pictures?

13 A. I did not look at the front of the pictures, never
14 seen the front of the pictures.

15 Q. Was John the one that showed you the pictures on
16 August the 24th, '96?

17 A. I believe it was Wayne Miller of the Highway
18 Patrol and John Johnson, and it may have been somebody else
19 in there.

20 Q. John Johnson, the same guy; right?

21 A. Right, and Wayne Miller, I think of the Highway
22 Patrol. He was the one, he is the one that showed me the
23 pictures.

24 Q. By the way, Mr. Collins, once you finish seeing
25 these two men, you went back home; is that correct?

26 A. That's correct.

27 Q. And when you went back home, you changed your
28 shoes; right?

29 A. I changed clothes; that's right.

Charles Collins - CROSS (As read)

1 Q. No, you change your shoes too?

2 A. I changed my clothes too and I changed my shoes
3 too.

4 Q. Well, when you were asked to give a statement to
5 the police, you didn't tell them you changed your clothes,
6 but you did tell them you changed your shoes; right?

7 A. I believe I told them I was sitting there putting
8 my socks on when I heard it on the scanner.

9 Q. Exhibit for identification D-8. 'When I went
10 home, I was in there getting some stuff.'

11 A. That's right.

12 Q. 'I had changed shoes.'

13 A. That's right.

14 Q. And then you go into, I was sitting there putting
15 my shoes on.... Is that correct?

16 A. That's right.

17 Q. You don't say anything about any other clothes
18 there?

19 A. Well, I had already done that.

20 Q. But you don't, you don't tell them about it;
21 right?

22 A. Well, I didn't think that was important. I had a
23 man that was going to do some work for me that day, and he
24 was sitting there with me.

25 Q. But anyway, when you changed these shoes, that was
26 right back after you had come from the Tardy area?

27 A. No, it was not. That was before I went to the
28 Tardy.

29 Q. Now that was right after you had seen these two

Charles Collins - CROSS (As read)

1 men; right?

2 A. That was right after I saw those two men.

3 Q. Okay.

4 A. Then I went back-- when I heard that on the
5 scanner, I went back up to the cleaners. I was going to go
6 by up there to see what was going on. That was when I was
7 changing clothes and shoes.

8 Q. For identification, Mr. Collins, this has been
9 marked as D-10 for identification. And I am showing you-- it
10 appears to be a group of pictures, and I ask you if you
11 recognize having been shown those before?

12 A. I was shown some pictures, but I honestly couldn't
13 tell you if this was them or not.

14 Q. All right.

15 A. It could have been, but I could not, you know--

16 Q. And you have also told me as to the exhibit which
17 is now S-91, you really can't tell me for sure whether these
18 were the pictures you were shown or not, these exact
19 pictures; right?

20 A. I was shown pictures like this, but I couldn't
21 tell you if them are the exact pictures, no.

22 Q. All right. Okay. I'm going to show you another
23 exhibit. This is State's Exhibit number 1, and it purports
24 to be a picture of the outside of Tardy's. I'm going to ask
25 you if you can identify in that exhibit that is State's 1,
26 can you see in that State's 1 where the cleaners is that you
27 were going to?

28 A. It's right there.

29 Q. Okay, that is like on the other side of Tardy's;

Charles Collins - CROSS (As read)

1 right?

2 A. It's right straight across the little street
3 there.

4 Q. The street there. That's the next thing I'm going
5 to do." ... "Mr. Collins, I'm just trying to be able to see
6 if we can see in the pictures a couple of things you talked
7 about. This S-4, would that be the cleaners right there?

8 A. That's correct.

9 Q. Okay, that is the cleaners. You see a little bit
10 of Tardy's, and then you see the cleaners there; right?

11 A. That's correct.

12 Q. And there is a street in between there; right?

13 A. Yeah, that runs east and west.

14 Q. Well, now I am showing you what is D-11. Is that
15 the street that runs? If you know?

16 A. Yeah, that is the street that runs down east and
17 west.

18 Q. So D-11 is the cleaners, and that shows the street
19 that we saw on the map there. Carrollton, I think they
20 called it on the map; is that correct?

21 A. I think so.

22 Q. Okay, that runs right along between Tardy's and
23 the cleaners; right?

24 A. Yeah, I think.

25 Q. On this picture, on this picture am I pointing to
26 the place where the cleaners is?

27 A. Yeah, that's the front door to the cleaners right
28 there.

29 Q. Okay, the street right next to it is the street

Charles Collins - CROSS (As read)

1 that runs between it and Tardy's; is that correct?

2 A. Well, sort of. It's on a, you know, offset there
3 a little bit. But it is pretty well much so, yeah.

4 Q. Okay, well, I'm going to just go over to the jury
5 like here so they can see this. Finally, you talked about
6 a-- I called it an island, you know, but a little center
7 piece in the street that cars park along; is that right? Is
8 that it or do you know?

9 A. This is it. This is going up to, I don't know if
10 that is-- yeah, there is the depot. Yeah, this is it right
11 here.

12 Q. So the railroad tracks should be on the right side
13 of that?

14 A. The railroad tracks is going to be on the right
15 hand side, and Tardy's is going to be on the left-hand side
16 right here.

17 Q. So you would have been on the side of the street
18 closest to Tardy's; is that correct?

19 A. Yeah. Right.

20 Q. Right in that?

21 A. Right in that vicinity there.

22 Q. Please step down if you can and approach the
23 jurors." ... "The first exhibit we have now that has been
24 admitted into evidence is D-9. Do you see that D-9 right
25 down there?

26 A. (Transcript reflects Witness nods his head.)

27 Q. Okay, now this is the map, and it is going to be
28 kind of hard to do. We are going to pass it to the jury, but
29 before we do, we will try to point some things out. What we

Charles Collins - CROSS (As read)

1 have written up here in the corner, what I have written at
2 your direction is route taken by Mr. Collins. And then we
3 pointed to at least three different spots on that route; is
4 that correct?

5 A. Yes, sir. Yeah, that's correct.

6 Q. And that is the route which essentially points us
7 to 51, the route you took from Bell Street all the way where
8 you went down Summit Street and then turned and you went down
9 what you call Main but which is actually Front Street?

10 A. Correct.

11 Q. Okay, let's just show this to the jury. Route,
12 and I'm going to pass it, but I am just showing it. 'Route
13 taken by Mr. Collins' is written up here at the top. Then
14 what we have is arrows pointing to Bell Street where it
15 starts going up just right above there to Applegate or 51; is
16 that right, Mr. Collins?

17 A. That's correct.

18 Q. And it goes all the way down here to Summit
19 Street. I think there is another arrow pointing, and it
20 turns right. You see it going here and wind up on Front
21 Street, okay? Okay, then at the bottom here, Mr. Collins,
22 what we have is something called, in bad handwriting it says,
23 'Other route'; is that right?

24 A. That's what you have got, yes.

25 Q. Okay, and then you have arrows pointing to that
26 other route; is that correct?

27 A. That's correct.

28 Q. And we have Bell Street here again, and we
29 indicated that you could go up Bell Street and turn on

Charles Collins - CROSS (As read)

1 something called Simpson Drive; right?

2 A. Yes.

3 Q. Which it looks to be like one block down from Bell
4 Street. Is that about right?

5 A. That's one block out.

6 Q. Okay, and then you can go straight down that
7 Simpson Drive and hit Church Street; right?

8 A. That's Old Highway 51, yes.

9 Q. That drives you right down to in town. That takes
10 you right into town to that street that we have discovered is
11 Carrollton?

12 A. That's correct.

13 Q. And Carrollton takes you right to the cleaners;
14 right?

15 A. That's correct.

16 Q. Without even passing Tardy; right?

17 A. That's correct.

18 Q. Without going north of Tardy's; right?

19 A. That's correct.

20 Q. Okay. I will pass this to the jurors. Could you
21 stay, stay there just for a second. We are going to get rid
22 of all these right now. Now this is, this is a picture we
23 have already decided, you can see a little tip of Tardy's,
24 but more importantly, to the left of where you have got a
25 Tardy's sign, you can see that cleaners; right?

26 A. That's correct.

27 Q. You see that cleaners. It looks like a white
28 building on this picture; right?

29 A. That's correct.

Charles Collins - CROSS (As read)

1 Q. I'm going to pass that too. Now that is what-- I
2 have been saying this and that, but let me just state the
3 exhibit number. Exhibit number of this one is S-4, and the
4 exhibit number on the first one was D-9. Then we are going
5 to look at D-11. What we have in D-11, we see the white
6 building again; is that right?

7 A. Correct.

8 Q. And that's the cleaners. Then we see that street
9 called Carrollton; am I correct?

10 A. That's correct.

11 Q. So and we don't see Tardy's in this picture?

12 A. There's Tardy's right there.

13 Q. Well, you see a little tip of it, like the back of
14 it?

15 A. The side of it.

16 Q. The side of it, the side, okay. The street is
17 right between. What that shows really is the street that
18 runs between Tardy's and the cleaners; right? And that's the
19 street you did not take at the time you passed Tardy's and
20 saw the split second glance; right?

21 A. That's correct. I did not go down that street.

22 Q. Okay. And finally, that is the street you would
23 have taken if you would have taken the other route that we
24 put on the map; is that correct?

25 A. If I had taken the other route.

26 Q. Now this here is the little area where-- what is
27 this like a pole in the middle of the street; is that right?

28 A. I guess, they have changed it somewhat now, and I
29 can't remember, but I believe it was just a pole there. I

Charles Collins - CROSS (As read)

1 don't remember whether it was a light on it or not, but it
2 was several of these up through there with trees planted, you
3 know.

4 Q. And you can see some trees in the background?

5 A. Right.

6 Q. Anyway, what this shows is kind of like what I
7 call an island. Some people might call it the center piece
8 or whatever; is that right?

9 A. Whatever, divider.

10 Q. Divider; that is probably what you should call it.
11 We will pass that down. That is D-12. Okay. Now S-91.
12 Well, I'm going to also-- you have already identified S-91.
13 You said-- well, you didn't identify it. You said you can't
14 say for sure if these are the pictures you saw?

15 A. No, I cannot. I saw some pictures like that, but
16 I couldn't swear that those are the pictures.

17 Q. We will leave that alone. Okay. Now Mr. Collins,
18 finally, at the first hearing when I asked questions -- on
19 many different occasions you have been asked questions and
20 what you have responded-- and listen to my question
21 carefully. You haven't responded that that was the man out
22 there. What you have said is that looks like him. Sometimes
23 you said, 'I think that's him.' That's true, isn't it?

24 A. At some time or another I may have said
25 something like that. I really couldn't tell you.

26 Q. This is on page 443 of this hearing that happened
27 in 1997. And the question was, 'All right, sir. But I wrote
28 down, I believe, what you said today, looks...like him.'
29 Wasn't that what you testified to, Mr. Collins? Answer:

Charles Collins - CROSS (As read)

1 'That's exactly right.' That's what was said there; is that
2 correct?

3 A. That's correct.

4 Q. Okay. Earlier on in the transcript. Earlier in
5 this transcript way back in '97, you were asked the question,
6 'Were you able to positively identify one of the two
7 individuals that you saw there?' Answer: 'I picked out a
8 photograph that I believe was one of them.' That's what you
9 said; right?

10 A. That's correct.

11 Q. Question: 'I want you to look around in the
12 courtroom and see if you see one of those two individuals
13 that you saw standing in front of Tardy Furniture.' Is that
14 correct?

15 A. That's correct.

16 Q. Now you were in a courtroom at this time, and you
17 pretty much know that the lawyers sit at a table; is that
18 right?

19 A. That's correct.

20 Q. And right next to them, as far as the defense
21 lawyers are concerned, the defendant sits there; right?

22 A. That's correct.

23 Q. Then you said, 'The man I seen didn't have glasses
24 on that day.' Is that what you said?

25 A. That's correct. He did not have glasses on that
26 day.

27 Q. 'All right. Other than the glasses, do you see
28 the person in the courtroom today?' Your answer was, 'I see
29 a man I think is him.' Is that what you said?

Charles Collins - CROSS (As read)

1 A. That's correct.

2 Q. Then they said, 'Would you point to him and
3 identify him, please?' Then you pointed to Mr. Flowers; is
4 that correct--

5 A. --That's correct--

6 Q. --in this courtroom. Okay. Then if you look at
7 here, it says here, 'The Defendant removed his glasses.'
8 That's what it says; right?

9 A. He did.

10 Q. Okay. Then you went on to say, 'That looks a lot
11 like him.' That's all you said; right?

12 A. That's correct.

13 Q. 'What was the person doing that you' saw? You
14 said, 'He was standing beside a car.' That is not what I am
15 really trying to get to. That is not relevant. But your
16 response even then is, 'That that looks a lot like him.' Is
17 that correct?

18 A. That's correct.

19 Q. You have seen people that look like other people
20 before?

21 A. Well, certainly.

22 Q. Seen people that look a lot like other people in
23 your view. Sometimes somebody looks like somebody to you,
24 but don't look like them at all to other people; is that
25 right?

26 A. That could very well be possible.

27 Q. For instance, you picked out two people. One you
28 said looked like the person. You actually picked out two
29 people on the day, two different people that you said looked

Charles Collins - CROSS (As read)

1 like the person on that day; is that correct?

2 A. I don't think that's what I said.

3 Q. Oh, okay. Well, we will get to that. Now I'm not
4 talking about at the hearing, but when you did the
5 photographic--

6 A. --That's when I'm talking about.

7 Q. Okay, good. And then at other points you have
8 continued to say, you know, things like when you even talked
9 about it today when the District Attorney asked you, you
10 didn't say, 'Well, that's the man.' What you said, 'I will
11 always believe that's the man.' That's what you said; right?

12 A. (Transcript reflects No response.)

13 Q. That's what you said that yesterday when he asked
14 you that?

15 A. I believe I said, 'I believe that is the man and I
16 will always believe it.' I believe that's what I said.

17 Q. Of course, you have been looking at him in court.
18 This person that you saw that day in that split second
19 glance, you had never seen him before in your life; is that
20 right?

21 A. As far as I know, that's correct.

22 Q. Now you have been looking at Mr. Flowers. He has
23 been sitting over there at that table. You have seen him
24 several different times; right?

25 A. Yeah, but as far as just sitting here looking at
26 him, no, I haven't been sitting here looking at him.

27 Q. Well, he has been there for you to look at; right?

28 A. Well, that is-- you are correct.

29 Q. Right here, for instance, you asked him, 'But you

Charles Collins - CROSS (As read)

1 can't sit there under oath and swear that this is the man you
2 saw up there on Front Street that morning?' Answer. All I
3 can say--excuse me. 'All I can tell you,' and this is on page
4 444, by the way. 'All I can tell you is he looks like him.'

5 A. That's correct.

6 Q. So that is true?

7 A. That's correct. That's what I said that day.

8 Q. That was in '97 or so?

9 A. That's right, in Tupelo.

10 Q. Just recently here in a hearing we had here in
11 1999 you were asked by myself, were you, 'At no time did you
12 say you were certain that he was the man; right?' And your
13 answer was here again under oath just a month or so ago--
14 well, this is March-- actually a couple of months ago. 'I
15 told them I believed that was him. That's what you said;
16 right?

17 A. I guess that's what, I think that's what-- yeah,
18 that's what I told you.

19 Q. 'At any time did you say you were certain that
20 that was him?' 'All I ever told them was I believed that was
21 him.' Question: 'Well, actually you didn't say, 'I believe
22 it was him.' You said, 'I think?' 'Well, maybe I said, 'I
23 think it's him.' That's?

24 A. Okay.

25 Q. Now--" ... "I don't want to hold you. The one
26 question I was going to ask is this. Now when you gave a
27 description of-- do you remember you gave a description of
28 Ms. Rigby and what she had on that day, Carmen Rigby?

29 A. Yes, I do.

Charles Collins - CROSS - REDIRECT (As read)

1 Q. You were very detailed. You pointed out that she
2 had pink and pink; is that right?

3 A. That's correct.

4 Q. And you talked about, I think you talked about her
5 fluffing her hair. And you remembered all that; is that
6 correct?

7 A. That's correct.

8 Q. You remembered a whole lot of things about
9 actually her jingling keys and all that kind of stuff?

10 A. That's correct.

11 Q. I see. And then on the other hand, you never did
12 say what these men had on; is that correct?

13 A. I couldn't see what they had on.

14 Q. And you never said, never described one of them's
15 eyes or face or anything like that?

16 A. Well, I couldn't have seen their eyes from where I
17 was at.

18 Q. You didn't see that?

19 A. No."

20 BY MS. FERRARO:

21 "Okay. All right, I have no further questions."

22 REDIRECT EXAMINATION AS READ BY MR. EVANS:

23 Q. "Mr. Collins, I will try to be short. There are a
24 few things I want to go back over with you. You have been
25 asked repeatedly and repeatedly about different things that
26 you have said. Without going into all of it, you have gone
27 through this numerous times; is that correct?

28 A. That's correct.

29 Q. You told the officers on March the 10th what

Charles Collins - REDIRECT (As read)

1 happened; is that right?

2 A. (Transcript reflects No audible response.)

3 Q. That is one time that you talked to them. This is
4 the statement I believe Mr. Lumumba introduced?

5 A. March the 10th of?

6 Q. Of '97.

7 A. This is?

8 Q. This date up here. That is just one of the times
9 that you have talked about this; is that correct?

10 A. That's when I talked to Mr. Lumumba?

11 Q. No, no.

12 A. Oh.

13 Q. To Mr. Johnson. This is the statement Mr. Lumumba
14 was showing you while ago.

15 A. I'm not sure about that date, but I am sure it may
16 be right. I'm not sure about that date. I couldn't tell you
17 about that date.

18 Q. All right. You also talked to officers on the day
19 the crime was committed; is that correct?

20 A. That's correct.

21 Q. And you have told what happened at other times; is
22 that right?

23 A. Yeah, I talked to-- that morning, the third time
24 that I went up there, that's when I came up Church Street,
25 and when I turned on Carrollton Street that he is talking
26 about, that's when James Taylor Williams, the Highway
27 Patrolman was standing out--" ...

28 Q. "All right, you can continue.

29 A. Can I answer?

Charles Collins - REDIRECT (As read)

1 Q. Yes, sir.

2 A. That's when I had heard on the scanner. I was on
3 my way back to the cleaners that time. And that's when James
4 Taylor Williams, the Highway Patrolman, was standing at the
5 edge of Carrollton Avenue and the back of Tardy Furniture
6 Company. I had my window rolled down, and his wife works at
7 P & F, and he flagged me down and told me to go--" ...

8 Q. "You can't, the Judge won't let you go into what
9 somebody else told you.

10 A. Oh, okay.

11 Q. But you told them what you knew at that point; is
12 that correct?

13 A. That's correct.

14 Q. And you have been asked numerous times in
15 different court hearings if this was the man that you saw in
16 front of Tardy Furniture; is that right?

17 A. That's correct.

18 Q. I want to direct your attention to page 76 of the
19 same proceeding that Mr. Lumumba has asked you about several
20 times, the one dated Wednesday, January 6, 1999, and I will
21 ask you to read, if you would, starting with this answer
22 right here on page 76, line 3. Read through line 7, if you
23 would, out loud.

24 A. 'I told them, I said, 'I think that's him. I
25 believe that's him.' I said, 'I am sure that's him.' That's
26 the words I said.' So you are-- 'So you said you were sure
27 that was him'? I said, 'I am sure that's him.'

28 Q. Thank you. All of these statements that you have
29 given, you went through the same steps of what you were

Charles Collins - REDIRECT (As read)

1 doing, who you saw and what you did that day; is that
2 correct?

3 A. That's correct, to the best of my knowledge.

4 Q. You explained how you had to go pay your gas bill,
5 and you were on the way to Hunger's Dry Cleaners; is that
6 right?

7 A. That's correct.

8 Q. You explained how you had taken the car to have
9 the spark plugs in it; is that right?

10 A. That's correct." ...

11 Q. "You explained how you, when you went by the bank,
12 you looked at your watch, and it wasn't quite time for the
13 bank to open. It was 8:59; is that right?

14 A. It was either 8:58 or 8:59. It was one or the
15 other.

16 Q. And that is consistent with what you have
17 testified to this jury; is that right?

18 A. That's correct.

19 Q. You stopped at the post office to get a money
20 order; is that right?

21 A. That's correct.

22 Q. That's the same thing you have told this jury?

23 A. Yeah, and I give y'all a copy of the money order
24 showing where I purchased the money order.

25 Q. Yes, sir. 'When I went to the post office, it was
26 around 9 o'clock or a few minutes after 9:00'?

27 A. That's correct.

28 Q. And you told this jury that same thing?

29 A. That's correct.

Charles Collins - REDIRECT (As read)

1 Q. You filled out your money order and you mailed it?

2 A. That's correct.

3 Q. That is consistent with what you have told this
4 jury?

5 A. That's correct.

6 Q. You started out the door, the breeze way; you met
7 Carmen Rigby?

8 A. She come in one side and I come in the other.
9 That's correct.

10 Q. You described in here what she was wearing. You
11 described to the officers, and you described in the other
12 testimony how she was twirling the keys, how she was fluffing
13 her hair up in the car. You described every detail to the
14 officers and prior hearings and two prior hearings--" ...
15 "Did you describe to the officers what kind of vehicle she
16 was driving?

17 A. I did.

18 Q. Did you tell the officers whether her vehicle was
19 clean or dirty?

20 A. It was very, very clean. I don't know that that
21 was her vehicle. That was the vehicle she was in, but it was
22 awful clean, and mine was awful dirty.

23 Q. Did you describe to the officers what time she was
24 going in Tardy Furniture?

25 A. I give an approximate time, according to the way I
26 figured about how long it took me to do what I had to do and
27 how long we talked, and I give an approximate time.

28 Q. Did you describe to the officers that she waved to
29 you when she was going in the door of Tardy Furniture?

Charles Collins - REDIRECT (As read)

1 A. That's correct.

2 Q. Did you describe to the officers why it was
3 necessary for you to pass that intersection because of the
4 vehicles being there?" ...

5 Q. "Basically what you said in your original
6 statement and other statements is when you went down to
7 cleaners, there was a lot of cars there. So you passed by
8 and didn't stop at that point; is that correct?

9 A. That's correct.

10 Q. And that's the same thing you told this jury?

11 A. That's correct.

12 Q. You even described in all of your prior statements
13 what kind of clothing Carmen Rigby was wearing, didn't you?

14 A. That's correct.

15 Q. Now let me stop and I will come back to this. I
16 want to hand you Exhibit D-6 and ask you to look at this. I
17 want you to point out, and we will just do it by number
18 considering the first one as the left one. Which number on
19 that is Carmen Rigby, the person that you saw that morning?

20 A. The second one here.

21 Q. The second one?

22 A. This one right here.

23 Q. And you are describing the second person on this
24 photo spread; is that correct?" ...

25 Q. "Mr. Collins, I want to direct your attention to
26 page 55, line 2, and again for the record, I'm talking about
27 the same transcript from January 6 of '99. I want you to
28 read line 2 starting with the word 'and.'

29 A. 'And my wife called me and told me I had got the

Charles Collins - REDIRECT (As read)

1 wrong plugs.'

2 Q. Okay. That is far enough. Is that the same thing
3 you had said earlier today or yesterday?

4 A. That's exactly what I said.

5 Q. And when she called you, were you in your car?

6 A. I was in my car.

7 Q. Now I don't want to take up the time to go through
8 all of this. Have you told the officers the same thing that
9 you have told this jury?

10 A. Everything I have told here today I have told
11 them.

12 Q. You have been asked about your glasses. Do you
13 uses your glasses for reading or for seeing far off?

14 A. I use my glasses for reading and to see up like
15 this. Off out there I can see anything. You know, I have no
16 problem seeing arm's length away.

17 Q. Do you have any problem seeing my face from this
18 distance?

19 A. No, I do not.

20 Q. Approximately 25 or 30 feet?

21 A. No, I do not.

22 Q. Now you have been asked quite a few times about
23 the direction that you traveled. I want you to explain to
24 the jury what the main streets of traffic are in the town of
25 Winona?

26 A. The way I went-- my first purpose was to go to the
27 bank. That is the easiest way to go is up 51 or Applegate or
28 ever what you want, down Summit Street to town.

29 Q. Is Summit Street a main drag through town?

Charles Collins - REDIRECT (As read)

1 A. Pretty much so. I mean it is pretty much, you can
2 pretty much get to either place you want to go. But the way
3 he is talking about you have got to go down through there
4 where they have got a factory, and they have always got big
5 trucks backing in there. They have always got the road
6 blocked. You go up to 407 there, and they have always got a
7 lot of traffic. You go up to Church Street. There is cars
8 parked on both sides of the street. You have to stop and you
9 have to wait to get through there. It's a whole lot faster
10 to go the way I went than it is to go up the way he is
11 describing.

12 Q. Thank you. And in this photo lineup where you
13 identified the Defendant, I want you to look at the back of
14 his picture and see if you put your initials on that?

15 A. That is my initials.

16 Q. And did you put your initials on it at the time
17 that you looked at that and identified the Defendant?

18 A. I sure did.

19 Q. The lineup that you saw is the one you put your
20 initials on; is that correct?" ...

21 A. "--is the one I just--" ... "The one I just saw
22 is the one I put my initials on. The one he showed me I
23 never seen my initials. I couldn't have told you if that was
24 the lineup or not.

25 Q. Mr. Collins, do you have any reason here in this
26 court to lie on this man over here?

27 A. I never knew that man until this come up.

28 Q. And you have been--

29 A. --I have no reason to lie on any man in this

Charles Collins - REDIRECT (As read)

1 courtroom.

2 Q. Yes, sir. You have been asked several times to
3 describe how the folks that you saw were traveling. Would it
4 be a fair statement that from where they were going, they
5 were going across the street--" ... "I tell you what; let me
6 just do this. I think this will be simpler and quicker.
7 Let's say that that wall behind you is the row of buildings
8 that Tardy Furniture is on, and we will say that Tardy
9 Furniture is from the door down to that wall. This is the
10 island out here where the cars are parked. In relationship
11 to Tardy Furniture, approximately where was the car that you
12 saw? We will say that this is Tardy Furniture to here.
13 This is Liberty, the old Liberty building from here. This is
14 the alley right here, and this is Coast to Coast right here.

15 A. It was going to be parked a little bit south of
16 where the alley is there. It was headed in just a little bit
17 south of where the alley is.

18 Q. Okay, I will stand, is this approximately the
19 right area then?

20 A. Well, and then the alley was like right here.

21 Q. Okay, and the alley would be on this side?

22 A. Right. I think it is Keystone Alley. I went by
23 and looked. I think they call it Keystone Alley.

24 Q. And considering this, tell me which direction you
25 saw the people walking. Tell me which direction to walk from
26 here.

27 A. There was a vehicle in front of the car that they
28 were standing at.

29 Q. Okay.

Charles Collins - REDIRECT (As read)

1 A. Almost in front of it there.

2 Q. All right.

3 A. And I do remember a blue Camaro car being parked
4 right there.

5 Q. All right.

6 A. And I recognized that car. And they walked north
7 in front of the car that was parked there. Then they turned
8 and went across the street.

9 Q. Okay, you saw them heading across the street?

10 A. Right. I guess you call it west.

11 Q. Yes, sir. Mr. Collins, who if anyone ever tried
12 to get you to pick out a certain person out of any of these
13 lineups? Did anybody--

14 A. --didn't anybody try to get me to pick out any
15 pictures. I was shown some pictures and asked to take a look
16 at the pictures. I myself picked these pictures out. Two of
17 them I picked out because of complexion. I said these
18 complexions, which I compared them to Mr. Johnny Hargrove's
19 that morning when I told you he had a complexion of Mr.
20 Johnny Hargrove, the Chief of Police of Winona. Then I
21 picked out-- and I told them then. He had a receding hair-
22 line. I described him, and I picked him out of that lineup
23 myself. No one told me anything.

24 Q. I want to direct your attention to the statement
25 that you gave on March 10th to John Johnson, and I want you
26 to read your response to that last question?

27 A. The man I picked out of the lineup there was the
28 man I seen there in front of Tardy Furniture Company.

29 Q. Yes, sir."

Conference - JURY OUT

READING OF TRANSCRIPT CONCLUDED

BY THE COURT: All right, ladies and gentlemen. I'm going to get y'all something to eat. I don't know what that is going to be at 1:30, but the bailiffs will come up with something. We will take a break while y'all eat, and then we will get started back.

(FOLLOWING THE LUNCH RECESS ON FEBRUARY 9, 2004, THE COURT, ALL COUNSEL, AND THE DEFENDANT MET AGAIN IN OPEN COURT BUT WITH THE JURY OUT FOR THE FOLLOWING:)

BY MR. EVANS: There is a matter I need to bring up.

BY THE COURT: We can do it right here.

(COUNSEL APPROACH THE BENCH.)

BY MR. EVANS: Your Honor, the next witness that the State intends to call is Odell Hallmon. I have covered some things that I think the Court would want me to with him. But just out of precaution, I want to tell the Court what the situation is. As the Court remembers in the trial in Gulfport, he testified as a defense witness that his sister Patricia Hallmon had lied. Since he gave that testimony, he has come to me, furnished a statement that the reason he lied is Curtis was in jail with him at Parchman. Curtis came to him and asked him to lie for him, sat down with him and told him what to lie to. He did, in fact, give sworn testimony that was a lie. And after he did that, they had a falling out. The Defendant threatened to kill him, told him he would kill him just like he did the folks at Tardy Furniture. I

Conference - JURY OUT

1 bring that to the Court's attention for the reasons
2 that I have advised him that I am not going to ask
3 about them being in jail together. I'm going to try
4 to avoid that. And we have been through this before.
5 It may end up getting to the point that it to a
6 certain extent comes out. But I have told him not to
7 mention the fact that he was in jail with him, just
8 that they did have a conversation. I have also told
9 him not to mention a previous trial; that the way I
10 will ask him is by probably in a leading question, is
11 Have you ever given sworn testimony for him, instead
12 of Have you ever testified in court or anything like
13 that.

14 That is the only things that I can think of that
15 we have got to avoid, but I wanted to see before we
16 got into it if the Defense agreed that we needed to
17 try to avoid those things and the best way to approach
18 it from the Court's standpoint.

19 **BY MR. CARTER:** Mr. Flowers has been in jail
20 every since he got arrested, and if they met, it had
21 to be in jail, and I don't care whether it gets out or
22 not.

23 **BY MR. EVANS:** Okay. There wouldn't be any
24 objection if we did cover where it happened.

25 **BY MR. CARTER:** Not as far as I'm concerned.

26 **BY THE COURT:** Here is the thing that concerns me
27 the most, and that is an inadvertent comment about any
28 other trial. And you know, I realize you are not
29 going to ask him that, but.

Conference - JURY OUT

1 **BY MR. CARTER:** I will probably have to ask him
2 if he testified under oath contrary to what he is
3 testifying today. And hopefully, if he says, if he
4 mentions trial, I will have to ask him that.

5 **BY THE COURT:** Oh, I'm not trying to limit
6 anybody.

7 **BY MR. CARTER:** Oh, I understand.

8 **BY THE COURT:** I think the danger is on your
9 side.

10 **BY MR. EVANS:** And I will be glad to go back
11 there and tell him one more time that he can't mention
12 that.

13 **BY MR. DE GRUY:** And specifically, on the
14 allegation that Mr. Flowers threatened him after this
15 falling out, after the testimony was given is -- he is
16 certainly not saying that that is why he now came
17 forward. It has no relevance to anything he would be
18 testifying to. It was at a separate time after his
19 giving testimony, so we would object to that.

20 **BY MR. EVANS:** Of course, the relevance is that
21 that is at the point that he admitted to him that he
22 killed the other four people. He has threatened to
23 kill him just like he did the other four people he
24 killed at Tardy's.

25 (Mr. Flowers confers with Mr. de Gruy.)

26 **BY MR. CARTER:** If the Court will remember, I
27 made one of my motions was to bar testimony from, for
28 lack of a better word, snitches. And this testimony
29 Mr. Evans is talking about now is something that has

Conference - JURY OUT

1 newly come forth. I didn't know before today. I got
2 two tapes from Mr. Evans, and on neither of those
3 tapes is it said that Curtis threatened to kill Odell
4 too.

5 BY MR. EVANS: It's on your discovery.

6 BY MR. CARTER: I don't recall it. Maybe it did.
7 I don't remember seeing that, but maybe it did. I
8 will have to look, but I don't remember that. I mean
9 there are two tapes that we have looked at well, and
10 he didn't say that on the tapes.

11 BY MS. FERRARO: I would agree with that.

12 BY MR. EVANS: It would be no way of explaining
13 to the jury under what circumstance he made the
14 comment "I killed the four people" without covering
15 the whole picture.

16 BY MR. CARTER: What it boils to that at this
17 point, they are trying to get, trying to take this
18 case beyond circumstantial evidence. And they are so
19 desperate to do it that they are willing to call a guy
20 that has taken the witness stand and told a totally
21 different story before.

22 BY MR. EVANS: This is a defense witness that has
23 turned around and admitted he lied.

24 BY THE COURT: Well, I'm also faced with the law
25 in this state about this type of testimony and the
26 serious precautions that the Supreme Court has
27 discussed. And this is not only in the nature of
28 snitch testimony; now it's in the nature of somebody
29 who has perjured themselves and then turned around and

Conference - JURY OUT

1 giving snitch testimony, and I have got a real, real
2 problem with this.

3 BY MR. EVANS: But Your Honor, the reason he
4 perjured himself is because the Defendant asked him
5 to. It is not that he perjured himself in any other
6 way. He is strictly a defense witness that admits
7 that he lied because of the Defendant asking him to.

8 BY MR. CARTER: We have got a known liar, and we
9 don't have any expressive way of proving that. Mr.
10 Evans knows himself that Odell wanted, to be the liar
11 that Odell--

12 BY MR. EVANS: --Well, we know it happened.

13 BY THE COURT: I tell you what we are going to
14 do. We are not going to finish your side of it today.
15 I'm not going to allow him to testify at this point in
16 time, and I want y'all to research this point tonight
17 on the admissibility of this testimony together with
18 what limiting instructions, if any, I have to give if
19 he does testify to it. And then we will cross that
20 bridge tomorrow. Okay?

21 BY MR. CARTER: Yes, sir.

22 BY MR. EVANS: All right.

23 END BENCH CONFERENCE.

24 BY THE COURT: Did he go get the witness? I'm
25 ready for the jury.

26 JURY ENTERS THE COURTROOM.

27 JACK MATTHEWS,
28 a white male called to testify as a witness by the State of
29 Mississippi, having first been duly sworn, testified as

Jack Matthews - DIRECT

follows, to-wit:

BY THE COURT: State your name.

BY THE WITNESS: Jack Matthews.

BY MR. EVANS: Your Honor, give me just a minute.

Swapping those witnesses, I did not have all my exhibits out for this one. (Pause.)

DIRECT EXAMINATION BY MR. EVANS:

Q. All right, have you stated your name for the record?

A. Yes, sir.

Q. Mr. Matthews, how are you now employed?

A. I'm the Director of Security at the Greenville Leflore Hospital in Greenwood, Mississippi.

Q. I want to direct your attention back to July the 16th of 1996. I will ask you how you were employed at that time?

A. I was an investigator with the Mississippi Highway Safety Patrol.

Q. Did you have an occasion to be called to assist in the investigation of murders at Tardy Furniture?

A. Yes, sir. I did.

Q. Approximately what time did you arrive?

A. It was probably sometime between 10:30 and 11 o'clock, probably closer to 11:00 before I arrived at the scene.

Q. And were any other investigators and the highway patrol at the scene?

A. Shortly after I arrived, Lieutenant Wayne Miller arrived at the scene. He was just a few minutes behind me.

Jack Matthews - DIRECT

1 Q. Did you have an occasion to be shown the scene by
2 any officers from Winona?

3 A. Yes, sir. When I first arrived at the scene, there
4 in front of Tardy Furniture Company I was met by Chief of
5 Police of Winona -- correction, Johnny Hargrove.

6 Q. What did you see when you looked through the scene?

7 A. When we first walked in the door there, you could
8 see bodies lying there near the middle part of the store
9 where the counter was located.

10 Q. Did you see any firearms evidence at the scene?

11 A. Yes, sir. There was some hulls that were scattered
12 on the floor there next to, in the vicinity of the counter.

13 Q. Okay. Did you see any foot impressions?

14 A. Yes, sir. There was a foot impression in some
15 blood that was there on the, I believe it's on, probably on
16 the -- if you are coming in the door, it would be on the left
17 side of the counter, right in front of the counter.

18 Q. All right, were you present at the scene when
19 Melissa Schoene with the state crime lab recovered certain
20 evidence and took pictures at the scene?

21 A. Yes, sir. I was.

22 Q. Did you yourself recover some evidence from the
23 scene?

24 A. We recovered some items that day and then some at a
25 later time also.

26 (Mr. Evans shows document to Mr. Carter.)

27 Q. Mr. Matthews, I show you Exhibits 44 and 43, and I
28 will ask if you can identify first what Exhibit 44 is?

29 A. Okay. This is a Tardy Furniture check that was

Jack Matthews - DIRECT

1 made payable to Curtis Flowers in the amount of \$82.58.

2 Q. And where did you see that check on the 16th of
3 July?

4 A. I found this check on Bertha Tardy's desk back in
5 the back portion of the furniture store.

6 Q. And is it in the same condition now as it was in
7 when you saw it and recovered it?

8 A. Yes, sir.

9 Q. I will also show you Exhibit 44A and ask if you can
10 identify this?

11 A. That's just a blowup of this check.

12 Q. And Your Honor, I offer 44 and 44A into evidence.

13 BY MR. CARTER: No objection.

14 BY THE COURT: Okay, let them be admitted.

15 (CHECK TO CURTIS FLOWERS AND BLOWUP OF THAT CHECK
16 THAT WERE PREVIOUSLY MARKED AS STATE'S EXHIBITS S-44 AND
17 S-44A FOR IDENTIFICATION WERE NOW EACH RECEIVED IN EVIDENCE.)
18 BY MR. EVANS:

19 Q. Mr. Matthews, this check is made payable to who?

20 A. Curtis Flowers.

21 Q. And in what amount?

22 A. \$82.58.

23 Q. I will hand you Exhibit 43 for identification and
24 ask you if you can identify this?

25 A. This was a card that I found laying next to the
26 check on her desk in the furniture store.

27 Q. And I will also hand you 43A and ask you if this is
28 a true and correct enlargement of that?

29 A. Yes, sir. It is.

Jack Matthews - DIRECT

1 **BY MR. EVANS:** I offer these evidence, Your
2 Honor.

3 **BY MR. CARTER:** No objection.

4 **BY THE COURT:** Let them be admitted.

5 (TIME CARD FOR CURTIS FLOWERS AND BLOWUP OF THAT
6 CARD THAT WERE PREVIOUSLY MARKED AS STATE'S EXHIBITS S-43 AND
7 S-43A FOR IDENTIFICATION WERE NOW BOTH ADMITTED IN EVIDENCE.)

8 **BY MR. EVANS:**

9 Q. Can you tell what this is?

10 A. It appears to be the times that he worked there at
11 the furniture store.

12 Q. Times that Curtis Flowers worked?

13 A. Yes, sir.

14 Q. Mr. Matthews, did you have an occasion on July the
15 16th, 1996, to talk with the Defendant Curtis Flowers?

16 A. Yes, I did.

17 Q. Before you talked to him on that date, did you
18 advise him of what is commonly called Miranda rights?

19 A. Yes, sir. I did.

20 Q. And did you also advise him of the waiver of those
21 rights where he didn't have to answer your questions?

22 A. Yes, sir.

23 Q. Did he sign that form and talk to you?

24 A. Yes, sir. He did.

25 Q. I will show you Exhibit 109 and ask you if that is,
26 in fact, the waiver that he signed on July the 16th?

27 A. Yes, sir. It is.

28 **BY MR. EVANS:** I offer this into evidence, Your
29 Honor.

Jack Matthews - DIRECT

1 BY MR. CARTER: Let me see it.

2 (Pause while Mr. Carter reviews the document.)

3 BY MR. CARTER: No objection. (Pause.)

4 BY THE COURT REPORTER: Judge, did you rule?

5 BY THE COURT: Yeah. No objection?

6 BY MR. CARTER: No objection.

7 BY THE COURT: It is admitted.

8 (RIGHTS WAIVER FORM SIGNED ON JULY 16, 1996,
9 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-109 FOR IDENTIFICATION
10 WAS NOW RECEIVED IN EVIDENCE.)

11 BY MR. EVANS:

12 Q. Mr. Matthews, did you, in fact, talk with Curtis
13 Flowers that day?

14 A. Yes, sir. I did.

15 Q. Was any other officer with you when you talked to
16 him?

17 A. John Johnson was present.

18 Q. And on that particular day, about what time was it?

19 A. It was approximately, sometime I would say probably
20 between 1:00 and 1:30 maybe that day.

21 Q. What did he tell you that day?

22 A. We asked him about his whereabouts that day, where
23 he was. We asked him about some information that we had
24 received after we arrived at the scene that day, that he had
25 been previously employed at Tardy Furniture Company and had
26 just been recently released.

27 Q. What did he tell you in response to that?

28 A. Well, he told us that he had been employed. I
29 believe his first date of employment was the 29th of June.

Jack Matthews - DIRECT

1 He had worked that day. He had also worked on the 1st and
2 the 2nd and the 3rd of July. And then he did not come back
3 to work after that. He called back down there on Tuesday,
4 the following, following that week and was informed by Mrs.
5 Tardy that he no longer had a job.

6 Q. Why was he informed that he no longer had a job?

7 A. She had asked him to go by Coast to Coast appliance
8 store there just down the street from Tardy to pick up some
9 batteries, I believe for a golf cart. And that he went down
10 there in the truck to pick them up, and after he loaded them
11 and pulled off, three of the batteries fell off the truck and
12 fell on to the street and broke. And she told him that, you
13 know, he would be responsible for those batteries because he
14 did not tie them down on the truck. Then I think the fact
15 that he didn't come back to work there was because of that
16 reason that--

17 BY MR. CARTER: -- Your Honor, I object to that
18 unless he has some personal--

19 BY MR. EVANS:

20 Q. -- Is that what he told you?

21 BY MR. CARTER: --reason for that opinion.

22 BY MR. EVANS:

23 Q. Is that what he told you?

24 A. Well, he told me that his reason that he didn't,
25 she didn't employ him back is because he didn't show up after
26 that time.

27 Q. Okay. Did you notice anything about him that day,
28 any type of injuries?

29 A. He had some, appeared to have some scratches on his

Jack Matthews - DIRECT

arm.

Q. Did you notice anything at that time about his shoes?

A. Well, he had some Nike tennis shoes on that day. I remember that.

Q. What size were they?

A. They were ten and a half.

Q. What did he tell you about his actions that day?

A. He told me that he had gotten up sometime around 6:30 that morning, and that around 9 o'clock he was baby sitting his girlfriend's two children, and that sometime around 9 o'clock that morning he had fixed breakfast for them. And then about 9:30 he had gone to his sister's house who lives, I believe, on Dennis Street. He had gone over there for approximately 15 to 20 minutes, and then he had gone to Kelly's One Stop, I believe there on Highway 51.

Q. What time did he say he went to Kelly's One Stop?

A. Approximately 10:30.

Q. Did you ask him anything about whether he went on the east side of Highway 51 that day?

A. Yes, sir. I asked him that question, and he said that at no time that morning had he been on the east side of Highway 51, that all of his activities were on the west side.

Q. Did you have occasion to keep the shoes that he had on that day?

A. We didn't get the shoes that day. We got them at another time. But not that day.

Q. But those shoes were Nikes that he had on at the time he came to the police department?

Jack Matthews - DIRECT

1 A. Yes, sir. They were.

2 Q. Did you have an occasion to take a gunshot residue
3 test that day?

4 A. Yes, sir. After we completed the interview, we
5 asked him if he would submit to a gunshot residue kit, and he
6 agreed to, and we took it at that time.

7 Q. I want to hand you Exhibit 94 and ask if you can
8 identify this?

9 A. This is the kit we used that day of the 16th on
10 the--

11 Q. Gunshot residue kit?

12 A. Gunshot residue kit.

13 BY MR. EVANS: I offer this into evidence, Your
14 Honor.

15 BY MR. CARTER: Objection until I at least look
16 at it.

17 (Pause while Mr. Carter opens it up and examines
18 it.)

19 BY MR. CARTER: No objection.

20 BY THE COURT: With no objection, let it be
21 admitted.

22 (GUNSHOT RESIDUE KIT PREVIOUSLY MARKED AS STATE'S
23 EXHIBIT S-94 FOR IDENTIFICATION WAS NOW ADMITTED IN
24 EVIDENCE.)

25 BY MR. EVANS:

26 Q. Mr. Matthews, I want to hand you back Exhibit 94,
27 and I will ask you to explain to the ladies and gentlemen of
28 the jury what that is and what you did with it on July the
29 16th?

Jack Matthews - DIRECT

1 A. This is a gunshot residue evidence collection kit,
2 and you use this on someone who has fired a weapon. A lot of
3 times you will use this to determine whether that person has
4 gunpowder residue on their hands. It has got four vials in
5 here. Each of those -- each of these are labeled. There is
6 a right palm, left back, right back, and the left palm. And
7 you just unscrew these vials, and they have a, it's hard to
8 see in here, but they have got a little material that is on
9 this. And you will just take it and, of course, anyone
10 shooting a handgun, if they are right handed or left handed,
11 of course, the gun is placed here. You take this on the
12 right back, and you will just -- all of the area that is
13 right in here where gunshot residue may fall after the gun is
14 fired, and you do it all. Just take this and you just do
15 it all the way down, all the way on their hand, all the way
16 around, all of this surface. Then you will do the palm with
17 the other one, with the one that is marked right palm. You
18 just, all over that one, and you put them back in the, of
19 course, back in the containers. You do it on the right hand
20 and the left hand.

21 Q. All right, before you used that kit, did you take
22 any precautions?

23 A. Yes. It has an instruction sheet that is in it. I
24 don't think it's in this one now because we probably didn't
25 put it back in there, but they come with an instruction
26 sheet. And, of course, it tells you just exactly how to do
27 it. You just follow a step by step procedure. You wash your
28 hands first. And then whoever is doing it, you use rubber
29 gloves.

Jack Matthews - DIRECT

1 Q. And did you do that on that day?

2 A. Yes, sir. I did.

3 Q. And is that the same kit that you took of Curtis
4 Flowers and sent to the crime lab to see if he had any
5 gunshot residue on his hand?

6 A. Yes, sir. I did.

7 Q. Now you have said that Curtis Flowers admitted to
8 you on the 16th that the reason he was let go in part was
9 because of dropping batteries off and busting them; is that
10 correct?

11 A. That's correct, and the fact that he did not show
12 up for work back on the 5th.

13 Q. Did you have an occasion to go check on what these
14 batteries cost?

15 A. I don't know the exact cost of them.

16 Q. Okay. Let me show you Exhibit 52, and I will ask
17 if you received this?

18 A. I don't ever remember seeing this exhibit.

19 Q. Okay. Did you have an occasion to search the store
20 in relationship to money?

21 A. Yes, sir. I did.

22 Q. What did you find?

23 A. We only found some change in the cash drawer
24 itself. There was some cash. There was no currency left in
25 the cash drawer.

26 Q. Now I'm not asking what anybody told you, but did
27 you have an occasion to check on what should have been there?

28 A. Yes, sir. I did.

29 Q. Did you have an occasion to go to the house that

Jack Matthews - DIRECT

1 the Defendant and Connie Moore was living in?

2 A. Yes, sir. I did.

3 Q. When was that?

4 A. I believe it was, it was a few days after the
5 16th. I think it was probably around the 20th.

6 Q. Okay, did you, in fact, search the house?

7 A. Yes, sir. We did.

8 Q. What, if anything, did you find, and what was found
9 in the house while y'all were searching?

10 A. Well, we picked up some clothing items, two pair of
11 tennis shoes. There was some money found.

12 Q. How much money was found?

13 A. I think, I'm not exactly sure, but I think it was
14 somewhere around \$255.

15 Q. Where was it found?

16 A. It was in the headboard of the bed.

17 Q. Did you have an occasion while you were there to
18 determine what size either one of Connie Moore's children's
19 shoes were?

20 A. Yes, sir. We did.

21 Q. And what did you find out?

22 A. The 11 year old boy wore a size seven. And the
23 three year old child, I don't remember, but it wasn't
24 anywhere close to what we were looking for.

25 **BY THE BAILIFF:** Judge, we have a juror.

26 BY MR. EVANS:

27 Q. Were you present when any photo lineups were shown
28 in this case?

29 **BY THE COURT:** Excuse me just a second.

Jack Matthews - DIRECT

1 BY THE WITNESS:

2 A. Yes, sir.

3 BY THE COURT: We need to take just a short break
4 just a second.

5 (One of the jurors left the courtroom to go to the
6 bathroom. Upon her return, testimony continued:)

7 BY MR. EVANS:

8 Q. Mr. Matthews, I think I was asking you about being
9 present at any lineups. Can you tell us about that?

10 A. Yes, sir. I was present at the lineup of Katherine
11 Snow. We had a lineup we showed her.

12 Q. Would you describe how that worked to the ladies
13 and gentlemen of the jury?

14 A. We had six photographs on a board and with six
15 different photographs on there, one of them being the
16 Defendant, and that, showed it to her there. And she picked
17 the Defendant out in that, on that lineup.

18 Q. How positive was she when she picked him out?

19 A. She went right to him.

20 Q. Did you have an occasion to assist in recovering a
21 projectile from the crime scene?

22 A. Yes, sir. We recovered one out of a mattress in
23 the store. I believe the date was maybe August the 13th.

24 Q. All right, and why did y'all go back then to
25 attempt to recover that projectile?

26 A. Well, one of the victims, Bertha Tardy, was -- her
27 shot was through and through. It was through the back of her
28 head and out the front, and we had never recovered that
29 projectile. And we knew that after the autopsy report came

Jack Matthews - DIRECT

1 back, that we knew that that projectile was somewhere in the
2 store. And we had noticed a spot on a wall that was a nick
3 spot on the wall, and it was in the vicinity of where her
4 body was. And we just, after we reviewed the photographs and
5 got that information from her, we decided to go back and look
6 into that area and see if we could find that projectile.

7 Q. And did you find it?

8 A. Yes, sir. We did.

9 Q. I will show you a chart that has Exhibits 95A, 96A,
10 97A, and at the top -- I think these are already in. Can you
11 identify what those are pictures of?

12 A. Yes, sir. This spot -- and I don't remember
13 exactly what number it was -- on the wall there, the picture
14 of the wall. That's the nick spot in the wall where the
15 bullet hit the wall and ricocheted into that mattress.

16 Q. Do those top three photographs show where it hit
17 the wall, ricocheted and show it being removed from the
18 mattress?

19 A. That's correct.

20 BY MR. EVANS: Your Honor, I offer this into
21 evidence.

22 (Board with photographs shown to Mr. Carter.)

23 BY MR. CARTER: No objection.

24 BY THE COURT: Let it be admitted.

25 BY MR. EVANS: Your Honor, while we are having it
26 marked, Exhibits 41B and 98A that are at the bottom
27 are enlargements of two of the photographs that
28 Melissa Schoene testified about, about the projectile
29 that was recovered from by the love seat. Since they

Jack Matthews - DIRECT

1 are on the same chart, I would also move them into
2 evidence on the enlargement.

3 BY MR. CARTER: No objection.

4 (LARGE BOARD CONTAINING FIVE BLOWUPS OF PHOTOGRAPHS
5 PREVIOUSLY MARKED FOR IDENTIFICATION AS STATE'S EXHIBITS
6 S-41B, S-95A, S-96A, S-97A, AND S-98A WERE NOW ALL ADMITTED
7 IN EVIDENCE.)

8 BY MR. EVANS: Now if you would -- Your Honor,
9 may the witness step down?

10 BY THE COURT: Yes, sir.

11 (Witness steps down in front of jury box.)

12 BY MR. EVANS:

13 Q. If you would, point out for the ladies and
14 gentlemen of the jury the nicked place where you could tell
15 that a bullet had hit?

16 A. That's the reason this yard stick is sitting up
17 here. We just used it to put it up there just so we would
18 have a reference point as to where -- and you can see the
19 paint knocked off of that column there in the store.

20 Q. And the other two photographs at the top, what do
21 they show?

22 A. This photograph just shows -- we had to cut the
23 mattress, and that's the projectile right here in the
24 mattress. We photographed it before we took it out, and this
25 is just an up close picture of it, of the projectile.

26 Q. All right, and which victim did this projectile
27 strike?

28 A. Bertha Tardy.

29 Q. You can have a seat again.

Jack Matthews - DIRECT

1 A. (Witness resumes witness stand.)

2 Q. Did you have an occasion at a later time to take
3 another statement from the Defendant, Curtis Flowers?

4 A. I did. I took a statement from him on July the
5 18th.

6 Q. Did you again at that time advise him of his
7 rights?

8 A. Yes, sir. I did.

9 Q. And did he sign a waiver of rights at that time?

10 A. Yes, sir. He did.

11 Q. And after that, did you take a taped statement?

12 A. Yes, sir.

13 (Mr. Evans shows waiver and statement to Mr.
14 Carter.)

15 Q. I will hand you first Exhibit 110 and ask you if
16 you can identify this?

17 A. That's the waiver of rights that he signed, and, of
18 course, myself and Wayne Miller also signed on the 18th of
19 July.

20 Q. I will hand you Exhibit S-111 and ask if you can
21 identify that?

22 A. That's a taped statement, a transcript of the taped
23 statement we took on the same day.

24 BY MR. EVANS: Your Honor, I offer both of these
25 exhibits into evidence.

26 BY MR. CARTER: No objection.

27 BY THE COURT: Let them be admitted.

28 (RIGHTS WAIVER FORM SIGNED ON JULY 18, 1996,
29 PREVIOUSLY MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT S-110)

Jack Matthews - DIRECT

1 AND TRANSCRIPT OF STATEMENT OF CURTIS FLOWERS PREVIOUSLY
2 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT S-111 WERE NOW
3 BOTH ADMITTED IN EVIDENCE.)

4 BY MR. EVANS:

5 Q. Mr. Matthews, I will hand you this statement back
6 that you took, and I will ask if you would read the statement
7 to the jury that the Defendant gave you.

8 A. Okay, this is an interview with Curtis G. Flowers.
9 The date is July the 18th, 1996. The time is 1502 hours.
10 The place is at the Winona Police Department. Interview was
11 conducted by Master Sergeant Jack Matthews. Others present
12 were Lieutenant H.W. Miller. It's in reference to armed
13 robbery. It's an interview -- before we take a statement, we
14 usually test the microphone -- I mean test the tape recorder
15 to make sure it's working, and the first statement on there
16 is: "Testing one, two, three, end test. Today's date is 18
17 July, 1996. The time is 1502. At the Winona Police
18 Department in Winona, Mississippi. Interviewing Curtis
19 C-U-R-T-I-S G. Flowers, F-L-O-W-E-R-S. Curtis' date of
20 birth is 5-29-70. Conducting this inves... interview will be
21 Master Sergeant Jack Matthews, investigator with the
22 Mississippi Highway Patrol. Also present is Lieutenant H.W.
23 Miller, investigator with the Mississippi Highway Patrol.
24 Today's date ah, is 18 July."

25 Question: "Curtis, ah, just a few minutes ago we... you
26 read a statement of your rights and you understand what your
27 rights are, and you signed a waiver. Is that correct?

28 Answer: Yes, sir.

29 Question: Okay. And you agreed to talk with us today

Jack Matthews - DIRECT

1 about your employment at Tardy Furniture" Company.

2 Correction: "Tardy Furniture Store"?

3 Answer: "Yes, sir.

4 Question: And ah, some details about that?

5 Answer: Yes, sir.

6 Question: Okay, I need to talk" to you -- "I need to
7 talk back with you on ah, 16, July the 16th. You indicated
8 that ah, around July the 1st that you were employed at Tardy
9 Furniture Store.

10 Answer: The 29th.

11 Question: And you worked there a few days." Question:
12 "Okay, the 29th of June?

13 Answer: Mhm...

14 Question: Okay.

15 Answer: That Saturday.

16 Question: All right. That was on a Saturday?

17 Answer: Mhmm.

18 Question: Okay. That was the first day that you
19 worked; right?

20 Answer: Yes, sir.

21 Question: All right. Tell us a little about ah, about
22 the time you started to work with them and why you left and
23 some of the things we talked about the day before.

24 Answer: Well, Saturday, my first day. Worked Saturday,
25 Monday, Tuesday. Wednesday we get off at 12 noon. Work half
26 a day on Wednesday. That was the 3rd. Supposed to come back
27 the" sixth -- Correction, "the fifth and the sixth. I didn't
28 show up.

29 Question: You told us about an incident that happened,

Jack Matthews - DIRECT

1 I believe on the third concerning some batteries that you
2 were supposed to pick up. Tell us about that.

3 Answer: Yeah. She told me to load up two used
4 mattresses that we had picked up from a lady on 51 and take
5 them up to ah, behind the tractor place right here on 51 and
6 put them in the warehouse. She told me when I got done
7 loaded them, pull around to the Coast to Coast. He had six
8 batteries that her husband was gonna get for a tractor or
9 something. Tractor batteries. Anyway I pulled around there
10 and loaded them up. I pulled off; three of them fell off.
11 So when I got back around there, I told her what happened.
12 She called around there. He told her to bring them back so
13 he could see if he could get some kind of deal on them. And
14 ah, evidently he couldn't or something. She told me ah,
15 well, she said you're responsible for the batteries. You
16 should have tied them down. And if they can't do anything,
17 you have to pay for them out of your check. And that was it,
18 and she sent me ah, up there to put her mattresses in the
19 warehouse and sent me to Carrollton to take her mattresses.

20 Question: What did you, did you pick up some more
21 batteries and take them around?

22 Answer: No. She just told me, the ones I dropped, I
23 picked them up and put them back on the truck. And when I
24 got back around there, they took them off.

25 Question: All right. And this was the third? July the
26 3rd?

27 Answer: I guess.

28 Question: Okay. And ah, July the 4th was a holiday,
29 and y'all didn't open that day?"

Jack Matthews - DIRECT

1 The answer was inaudible.

2 Question: "And you supposed to go that Friday?

3 Answer: That Friday.

4 Question: Was July the 5th?

5 Answer: Yes, sir.

6 Question: And, and...

7 Answer: I didn't go.

8 Question: You didn't go? Did you call in?

9 Answer: I called in Friday.

10 Question: I didn't call Saturday.

11 Question: You were supposed to work that Friday?

12 Answer: And Saturday.

13 Question: And Saturday?

14 Answer: Mhmm.

15 Question: The sixth? All right. When did you find out
16 that they had terminated you?

17 Answer: Uh, Tuesday. Tuesday that next week.

18 Question: You didn't go to work Monday either?"

19 There wasn't an answer to that question.

20 Question: "Did you even call in?

21 Answer: Uhmm. And then that Tuesday I got up, I was
22 going to go. When I got to my mama's house, I called. And I
23 asked her did Mike come back to work. She said no. I asked
24 her did I still have a job. She said no. I said did I get
25 one day, ah pay check? She told me uh, my check was pretty
26 much covered up for them batteries. That was it.

27 Question: I understand that ah, before you got off on
28 the 3rd, that she loaned you some money. Thirty dollars.

29 Question. Thirty dollars?

Jack Matthews - DIRECT

1 Answer: Mhmm.

2 Question: Did you have to pay that thirty dollars back?

3 Answer: She told my check was used up and that was it.

4 She told me I could pay the thirty dollars back out of my
5 check when she gave it to me. When I called her, she said
6 well, my check was used up.

7 Question: Have you been back to the store since that
8 time?

9 Answer: No, sir.

10 Question: Have you been working anywhere since that
11 time?

12 Answer: Nothing more than mowing lawns and working on
13 cars and stuff like that.

14 Question: Do you own a car?

15 Answer: Yes, sir. A Nissan pickup.

16 Question: You were telling me something ah, other day
17 about that car. It had some kind of mechanical problems.

18 Answer: Yeah. I need a head for it.

19 Question: A heater?

20 Answer: A head.

21 Question: A head? So it's not running at this time?

22 Answer: No, sir. I'm in my sister's car now.

23 Question: When did you, when, ah, long is it?

24 Answer: Mmmmm...it's been about two and a half months
25 now.

26 Question: So you hadn't had a vehicle for two and a
27 half months?

28 Answer: M-mumm.

29 Question: When did you find out that ah, Ms. Tardy and

Jack Matthews - DIRECT

1 ah, her employees, about the incident that happened down
2 there Tuesday?

3 Answer: When I got down here.

4 Question: Yeah?

5 Answer: Mhmmm.

6 Question: In other words sometime around uh.

7 Answer: After ah, twelve or something.

8 Question: Yeah, sometime between twelve and one? And
9 we talked to you about 1:30?

10 Answer: Mhmm.

11 Question: That's the first you knew about it?

12 Answer: Yeah. And I stopped back by the store on my
13 way home and then my daddy told me.

14 Question: What did you, what, what was your activities
15 on that Tuesday?

16 Answer: Tuesday?

17 Question: This past Tuesday?

18 Answer: Tuesday. Baby sittin.

19 Question: Just me give me a run down as to what you did
20 that day?

21 Answer: I baby sittin my girlfriend's kids. I left the
22 house twice. I went over to my sister's house who stays
23 right there on the next street, and I went to Jeff's store.

24 Answer -- correction, Question: Where?

25 Answer: Jeff's Store, right down 51. Down to Troy's.

26 Question: All right, ah, what time did you get up that
27 morning?

28 Answer: Oooh, somewhere between, probably 9:30
29 somethin' till 10:00.

Jack Matthews - DIRECT

1 Question: Okay. And you baby sittted your girlfriend's
2 children?"

3 The answer was inaudible. The next question is inaudible.

4 Answer: "She got two right now. I'm staying with her.

5 Question: How old are they?

6 Answer: Oooh... one of them two, the other one, I think
7 eleven.

8 Question: Boy or girl?

9 Answer: Boy. Boy eleven and the girl is two.

10 Question: Two. Okay. About what time did you get up
11 that morning?

12 Answer: About 9:30 or somethin' till 10:00.

13 Question: You were there at the house with the
14 children?

15 Answer: Mhmm.

16 Question: Until about 9:30 or quarter till 10:00.

17 Answer: Naw, I got up at 9:30 or somethin' till 10:00.

18 Question: Were the kids there at the house when you got
19 up?

20 Answer: Mhmm. Yeah.

21 Question: Okay. Where was your girlfriend?

22 Answer: At work. Richardson Brothers.

23 Question: What time did she go to work?

24 Answer: Seven.

25 Question: Did you, you didn't get up before she left?

26 Answer: No.

27 Question: She just got up and --

28 Answer: I always just tell her bye and keep staying
29 there in the bed."

Jack Matthews - DIRECT

1 This is a question by Officer Miller: "During that period of
2 time did you talk to anyone on the telephone?

3 Answer: No, sir.

4 Miller's Question: Do you have a telephone?

5 Answer: No, sir.

6 Miller: That's not one at your girlfriend's house?"

7 There was no answer.

8 Question: At what time did you go to your sister's?

9 Answer: About eleven. Twelve something." Answer was
10 inaudible.

11 Question: "And you indicated that you went to ah, the
12 store.

13 Answer: Yeah. That was like --

14 Question: What is the name of that store?

15 Answer: Kelly's Stop and Go.

16 Question: Kelly's Stop and Go. That's on US 51?

17 Answer: Uh-huh. South.

18 Question: What time did you go to the store?

19 Answer: Mmmm... it was about, I imagine about 12:30,
20 12:45, somewhere in there."

21 Answer-- Correction, Question: "After you went to your
22 sister's?

23 Answer: Yeah, I went and got a, went and got a six pack
24 and ah, bag of chips, pack of cigarettes, and that's it.

25 Question: Is that right before they, they picked you up
26 to come down here?

27 Answer: Yeah. I was drinking then. Yeah. I had just
28 opened a beer when Kenneth knocked on the door."

29 Question from Investigator Miller: "Where did you get

Jack Matthews - DIRECT

1 the money to buy the beer?" And the other part of it was
2 inaudible.

3 Answer: "Oh, I get unemployment.

4 Miller: You get unemployment? When do you get your
5 check?

6 Answer: It comes in on Wednesday. This was Tuesday.
7 Yeah, I still had money from the week before that.

8 Miller: What was your unemployment check?

9 Answer: What is it? 119.

10 Miller: 119?

11 Answer: Mhmm.

12 Miller: Was that your first unemployment check?

13 Answer: That was my third one. Last week was ah, that,
14 this week was the only week I didn't get an unemployment
15 check.

16 Miller: Cause you were working?

17 Answer: Mhmm.

18 Question: Okay. And you got up around 9:30 that
19 morning?

20 Answer: Mhmm.

21 Question: All right. You stayed there at your
22 girlfriend's apartment. Where does she live; what is her
23 address?

24 Answer: 7028 McNutt Drive.

25 Question: Did you, you didn't go anywhere until you
26 went... your sister's house was the first place that you
27 went?

28 Answer: First place I went.

29 Question: Okay, so you stayed there at the house" until

Jack Matthews - DIRECT

1 "the time that you got up at 9:30.

2 Answer: I couldn't." And the other part of it is
3 inaudible.

4 Question: "Until about that time that you went to your
5 sister's?

6 Answer: It was about noon" before "dinner, right in
7 there.

8 Question: Okay. And you stayed over there for how
9 long?

10 Answer: About fifteen minutes.

11 Question: Where does she live in relationship to your
12 apartment that you and your girlfriend stay?

13 Answer: My girlfriend stay on McNutt Drive, and she
14 stay on Dennis Street which is the next street over.

15 Question: How, how far is that?

16 Answer: Well, walking around the street, it about a
17 mile path, go straight up between two apartment houses to our
18 house.

19 Question: How long does it take you to get there?

20 Answer: About five minutes.

21 Miller: Where was the two year old when you were over
22 at your sister's house?

23 Answer: Up at their grandmama's.

24 Miller: Huh?"

25 Question [sic]: "Up at their grandmama's.

26 Miller: Did you take them over there?

27 Answer: Humm? Answer: No, sir. We always just send
28 them over the hill. Cause their grandmama stay behind her.
29 You just go over the hill to the street and all you do is

Jack Matthews - DIRECT

1 cross. So you know.

2 Miller: And you were keeping the children?

3 Answer: Yes, sir.

4 But when you went to your sister's house, who kept the
5 children?

6 Answer: Their grandmother.

7 Miller's Question: Did she come over to the house?

8 Answer: No, I sent them over there.

9 Question: You sent them up to the grandmother's house?

10 Answer: Mhmm. Sure did, cause when I left my sister's
11 house and come back by the house, cut through behind the
12 house and went to Jeff's.

13 Question: You were at Jeff's at some time around what
14 time?

15 Answer: About 12:45." The other part of that was
16 inaudible.

17 Question: "You bought a six pack of beer?

18 Answer: Six pack of beer, ah, pack of cigarettes and
19 two bags of chips.

20 Question: And that was on Tuesday?

21 Answer: Mhmm.

22 Question: The same day as when you came here to talk
23 with us. Where did you go when you left the store?

24 Answer: To the house.

25 Question: Back to the apartment?

26 Answer: Mhmm.

27 Question: Okay. Was anybody there when you got back
28 there?

29 Answer: Nope. When I came across the school campus, up

Jack Matthews - DIRECT

1 the street, like, inaudible, standing in the yard. I walked
2 to the edge of the hill and I told them good morning and we
3 all went to the house together.

4 Question: You didn't go anywhere that morning except to
5 your sister's, and what is your sister's name?

6 Answer: Priscilla.

7 Question: Priscilla? And she lives on what street?

8 Answer: Dennis Street.

9 Question: Dennis Street? Took you about five minutes
10 to from your apartment to her house?

11 Answer: About five minutes. Mhmmm.

12 Question. You stayed there what?

13 Answer: About fifteen, twenty minutes.

14 Question: You left there going to?

15 Answer: Kelly's Stop and Go.

16 Question: Kelly's Stop and Go, and you didn't go by your
17 apartment?

18 Answer: Yeah, I cut across, I had to go through there.
19 I gotta go the path. The path go behind the house.

20 Question: Well, did you go in your apartment or did you
21 just--

22 Answer: No, I didn't go in. Mhmmm.

23 Question. And on to the store?

24 Answer: On to the store.

25 Question: And you got your beer, cigarettes and potato
26 chips.

27 Answer: Come back.

28 Question: And come back." The other part of that was
29 inaudible.

Jack Matthews - DIRECT

1 Answer: "And got the kids from the top of the hill and
2 went back to the house.

3 Question: Okay. So you stopped at the grandmother's
4 house and got them?

5 Answer: No, sir. From where their grandmama stay and I
6 stay, my girlfriend stay, you can see all across there. When
7 I come across the school campus, got on Pile Street and
8 crossed over the hill, they could see me. We met up at the
9 top of the hill and come to the house.

10 Question: So if anybody says they saw you any other
11 place but your apartment or your sister's house or Kelly's
12 store --

13 Answer: Kelly's store.

14 Question: Or walking in between those places, then that
15 wouldn't be the truth?

16 Answer: Walking between Kelly's, my house and my
17 sister's house.

18 Question: Right. If they saw you any other place other
19 than those places?

20 Answer: Oh, yeah, oh yeah, he a lie.

21 Question: That would be a lie?

22 Answer: Mhmmm.

23 Question: Okay.

24 Answer: Sure would.

25 Question: Can you think back, is there any other place
26 you went or anybody you talked to during that time?

27 Answer: Didn't go nowhere else.

28 Question: Who was at your sister's house when you got
29 there?

Jack Matthews - DIRECT

1 Answer: LaToya...Hardy. That's my cousin.

2 Question: She is your cousin?

3 Answer: She's staying with my sister.

4 Question: You, you said your, your girlfriend didn't
5 have a telephone?

6 Answer: No, she don't.

7 Question: Does her mother have a phone?

8 Answer: Yes, she has a phone.

9 Question: Okay. You didn't use it?

10 Answer: Uhmmm. She don't even like me.

11 Question: How long, what are your girlfriend's hours?

12 Answer: Uh, they are suppose to work 7:00 to 3:30.

13 Sometimes they work 7:00 to 5:30.

14 Question: So she was at work. Does she come home for
15 lunch?

16 Answer: No.

17 So when she goes to work at 7:00, she's usually there
18 until 3:30 or 5:30?

19 Answer: Or 5:30.

20 Question: You didn't see her until later on that
21 afternoon?

22 Answer: When she got there, Mrs. Vanhorn was pulling
23 up.

24 Question: That is who you caught a ride from here with
25 Mrs. Vanhorn?

26 Answer: Uh-huh. I walked home.

27 Question: Oh. From here?

28 Answer: Uh-huh.

29 Question: Do you have any more questions?

Jack Matthews - DIRECT

1 Miller: Yeah. When you went to work that day, who
2 hired you?

3 Answer: Ah, Mr. Tardy.

4 Question, Miller's Question: Mr. Tardy.

5 Answer: Mhmm.

6 Miller : Who referred you to that job?

7 Answer: Ah, Mike, Mike Martin.

8 Miller: Mike?

9 Answer: Mhmm.

10 Miller: And Mike's the one that quit?

11 Answer: Yeah. He is going to truck driver school.

12 Miller: Did she hire you the same day that you went to
13 work?

14 Answer: No. I went down there on that Friday evening,
15 and she told me I could come back Saturday morning.

16 Miller: Saturday morning?

17 Answer: Mhmm.

18 Miller: Did you and Mrs. Tardy have any problems?

19 Answer: No.

20 Miller: I mean we know about the batteries.

21 Question: No, sir. Other than that, we didn't have no
22 problems. We didn't argue about that, you know. She talked
23 to me and told me. I understood because I should have tied
24 them down, you know.

25 Miller: How much was your check that you had coming?

26 Answer: I don't know. She was paying me five dollars
27 an hour.

28 Miller: How many hours did you have?

29 Answer: Saturday, Monday, Tuesday, Wednesday.

Jack Matthews - DIRECT

1 Miller: You never actually drew a paycheck?

2 Answer: No, sir. I didn't check get that check
3 cause --

4 Miller: How many hours did you work on...

5 Answer: ...Told me...

6 Question: ...Work on seven?

7 Answer: Uh, seven, from 9:00 to 5:00.

8 Miller: What did you do on Monday?

9 Answer: Monday?

10 Question: That would have been the first.

11 Answer: Mmmum. I think I came in that day. If I came
12 in, I worked seven hours.

13 Miller : And then Tuesday?

14 Answer: Tuesday, I worked seven.

15 Miller: You got off at noon time?

16 Answer: Wednesday.

17 Miller: We're talking about 26 hours?

18 Answer: Yeah, something like that. I wouldn't know.

19 Miller: So your check you had coming was running a
20 hundred dollars, maybe a little over?

21 Answer: Yes, sir. Somewhere in there about.

22 Miller: Uh, okay. And who fired you, you said?

23 Answer: She didn't fire me. She just told me she
24 couldn't use me no more.

25 Miller: Just couldn't use you any more? But she told
26 you that your check had been used up?

27 Answer: Yeah.

28 Question: Did that surprise you when she told you that?

29 Answer: No, sir. Cause she told me that same day, the

Jack Matthews - DIRECT

1 same day the batteries was dropped that ah, if they didn't
2 give her some kind of a deal on it, whoever handled the
3 batteries was responsible. That was it.

4 Miller: All right, ah, well, did you have anything to
5 say to her about that?

6 Answer: No, sir. She sent me to Carrollton."

7 Miller started to say something but didn't know what the
8 question.

9 And then the question [sic] was: "She said she is going
10 to leave the store early and that if ah, if she wouldn't dare
11 when we got back to come over to her house and just bring the
12 key. But when we got back, she was right there in front of
13 the store, her and her husband, just coming out, getting in
14 the car.

15 Miller: All right, what day was it that you dropped the
16 batteries?

17 Answer: Wednesday.

18 Miller: It was Wednesday morning?

19 Answer: Mhmm.

20 Miller: What day was it you borrowed the thirty
21 dollars?

22 Answer: Wednesday before we left.

23 Miller: Which did you do first, borrow the money or ah,
24 drop the batteries?

25 Answer: Dropped the batteries.

26 Miller. First?

27 Answer: Mhmm.

28 Miller: And then she still loaned you thirty dollars?

29 Answer: When we got ready to go home, she said have a

Jack Matthews - DIRECT

1 happy fourth. She said Curtis, you had the trouble,
2 inaudible, pay first. She said, well, do you need to borrow
3 anything? And I said, 'Yes, ma'am. I could use thirty
4 dollars.' And she gave me thirty dollars.

5 Miller: So there really was no big problem with you and
6 Mrs. Tardy?

7 Answer: No, sir. We didn't exchange no words.

8 Question: How did you get along with Mrs. Rigby?

9 Answer: Mrs. Rigby?

10 Question: The other lady.

11 Answer: The secretary? Oh, me and her cleaned up
12 together.

13 Miller: All right." So you took, so on the fourth you
14 took off before it was the holiday? Correction-- Let me
15 repeat that. Miller: "All right. On the fourth you took
16 off because it was a holiday?

17 Answer: Mhmm.

18 Miller: Who all did you see on the fourth? Who were
19 some of your buddies that you ran around with?

20 Answer: Oooh, on the fourth? We had a big get together
21 at my house, my mother's house.

22 Miller: Name some of the people that were there.

23 Answer: Oh, Johnny Campbell, Roscoe Campbell, my
24 mother, my father. You need some more?

25 Miller: Yeah. I mean how many people are we talking
26 about?

27 Answer: Inaudible, The family.

28 Miller: The whole family, large.

29 Miller: Who outside the family?

Jack Matthews - DIRECT

1 Answer: Mmmmmmm. I can't think of" everybody "outside
2 the family.

3 Miller: Well, what did you do on Saturday -- I mean on
4 Friday? You didn't go to work, so what did you do on Friday?

5 Answer: Sat around the house.

6 Miller: By yourself?

7 Answer: Uhmm. My girlfriend, she was off too.

8 Miller: Did you argue with" anyone, go anywhere --
9 correction, "go any place?

10 Answer: No.

11 What did you do on Saturday?

12 Answer: Back over at my mama's house. We sat around
13 and drank out there on the picnic tables and stuff.

14 Miller: Some of the same people that was there.

15 Answer: My uncle, Johnny Calhoun, Roscoe, Roger
16 Campbell, uh, that is about it.

17 Miller: And then on Sunday you --

18 Answer: Nothing.

19 Miller: You didn't do anything too much? Did you tell
20 a lot of people about the problems that you had had down
21 about dropping the batteries and --

22 Answer: Mmmm, my ah, my girlfriend. Well, my uncle and
23 them, they saw it. Cause we was between the alley over there
24 at the alley, over there at the Coast to Coast" in front
25 store. "The front store."

26 Next question by Miller is inaudible.

27 The answer is: "Robert Campbell.

28 Miller's question was: Robert?

29 Answer: He came" ... "on the weekends. Anyway and they

Jack Matthews - DIRECT

1 was over there at the fish market over there. And they was
2 coming out of the parking lot when I was coming up the alley.

3 Miller: And they saw the batteries spill?

4 Answer: Mhmmm.

5 Miller: But you didn't, did you have a lot to say about
6 the fact that ah, that they owed you some money?

7 Answer: No, sir. Mmmm.

8 Miller: After you ah, was terminated?

9 Answer: No, sir. I asked was I supposed to be able to
10 receive a check, and she told me remember, we talked about
11 the batteries? And I said 'Yes, ma'am.' And she said, well,
12 your check was used up. That was it.

13 Question: Did you know ah, about the store had been
14 broken into?

15 Answer: Uh, Mr. Tardy told me about that. Told me how
16 they came in and everything. He said that ah, come through
17 the air shaft or something.

18 Question: Where did you see Mr. Tardy?

19 Answer: At the store when I was working.

20 Question: This was when?" The other part of it was
21 inaudible.

22 Answer: "I don't know. He just telling me about a
23 break in, a break in they had a while back. That was the day
24 I started.

25 Miller: That was the same day you started that he was
26 telling you about a break in?

27 Answer: Yeah. He was telling me about a break in.

28 Miller: But didn't they have one while you were working
29 down there?

Jack Matthews - DIRECT

1 Answer: I don't know. She never did bring it up
2 because, you know, I never did go back to work. When I
3 called up there, she told me she couldn't use me no more. I
4 asked her did I have any paycheck coming, and she told me
5 remember, we talked about the battery. She said it used up.
6 I said okay. She said, sorry things didn't work out. I told
7 her okay. That was it.

8 Miller: And that was" that. "And that was what day?

9 Answer: Uh, that Tuesday.

10 Miller: What Tuesday?

11 Answer: Uh, I think it was the ninth, tenth, I don't
12 know."

13 Miller: That was "the first Tuesday after the fourth?

14 Answer: Mhmm. Yeah.

15 Miller: So you didn't go back to work that Monday
16 either?

17 Answer: Mmmm. No, sir.

18 Miller: You didn't call her?

19 Answer: I called her Saturday. I called her Friday,
20 and I called her Monday. And I didn't go in Tuesday, but
21 about eleven something Tuesday I called her. And I asked her
22 did Mike come to work and she said no. I asked her did I
23 still have a job, and she said well, she couldn't use me
24 cause I missed too many days. I asked her did I have a
25 paycheck coming, and she said you remember we talked about
26 the battery. You used it up.

27 Miller: So that was on Tuesday?

28 Answer: Mhmm.

29 Miller: When did you call?

Jack Matthews - DIRECT

1 Answer: About eleven something.

2 Miller: You called her?

3 Answer: Mhmm.

4 Question: Have you had a lot to say to different people
5 about what happened there?

6 Answer: No, sir. Nobody but Mike. I told Mike that to
7 deliver the mattress. She called Mike to help me. Me and
8 Mike was going to Carrollton. I just told Mike that man she
9 sent me around to the Coast to Coast. And I got some
10 batteries and dropped them. She said either if Jimmy don't
11 give me some kind of deal, I have to pay for them. And he
12 said no, you didn't, man; you know to tie them down. I said
13 yeah, I knew it. I said I told them. Yeah, and that was it.

14 Miller: What about ah, what kind of fellow is Mike?

15 Answer: He's a good guy.

16 Miller: Good guy?

17 Answer: Mhmm.

18 Question: Okay. If it would be all right with you, we
19 want, when we leave here, we'll carry you back to your
20 girlfriend's house or anywhere you want to go.

21 Answer: I got a car.

22 Okay. Well, maybe before we do that, we want" to show
23 -- "we want you to show us where you live and where your
24 sister lives.

25 Miller: And we will bring you back.

26 Question: And we will bring you back. Show us what you
27 did and the places that you went because neither one of us
28 are from Winona, and we, we're not familiar with, you know,
29 exactly where you're talking about.

Jack Matthews - DIRECT

1 Answer: Mhmm. Mhmmm. All right.

2 This concludes the interview with Curtis Flowers. The
3 time is 1525."

4 CONTINUING LIVE DIRECT EXAMINATION BY MR. EVANS:

5 Q. Did he, in fact, take you to where he was living?

6 A. Yes, sir.

7 Q. And which side of Highway 51 is that on?

8 A. He is on the west side of Highway 51.

9 Q. Where was his sister's house?

10 A. It's on the west side of Highway 51.

11 Q. Did he at any point show you any place that he
12 admitted being on the east side of Highway 51?

13 A. No, sir.

14 Q. Are you familiar with where Angelica is located?

15 A. Yes, sir.

16 Q. Which side of Highway 51 is that?

17 A. It's on the east side.

18 Q. Did you have an occasion to go see where Katherine
19 Snow identified him leaning up against a car?

20 A. Yes, sir.

21 Q. Which side of Highway 51 is that on?

22 A. That's on the east side.

23 Q. Did you have an occasion to go to Academy Street
24 where Bernard McChristian identified him?

25 A. Yes, sir.

26 Q. Which side of Highway 51 is that on?

27 A. That's on the east side.

28 Q. Did have you an occasion to go by Ms. Beneva
29 Henry's house?

Jack Matthews - DIRECT

1 A. Yes, sir.

2 Q. Which side of Highway 51 is that on?

3 A. That's on the east side.

4 Q. Did you have an occasion to go where Mary Jeanette
5 Fleming saw him that morning?

6 A. Yes, sir.

7 Q. Which side of Highway 51 is that on?

8 A. That's on the east side.

9 Q. Did you have an occasion to go by where Clemmie
10 Fleming said she saw him running from the store?

11 A. Yes, sir.

12 Q. Which side of Highway 51 is that on?

13 A. That's on the east side also.

14 Q. The front of Tardy's where Charles "Porky" Collins
15 identified him as seeing, which side of Highway 51 is that
16 on?

17 A. That's on the east side.

18 Q. Did you also have an occasion to go to a location
19 to remove some bullets from a post?

20 A. Yes, sir. I did.

21 Q. Why did you do that?

22 A. Well, when we talked to Doyle Simpson, we had
23 had -- he reported his gun being missing, and we were talking
24 to him there about that fact. And we wanted to know had he
25 shot that gun in any time, and he reported that he had. He
26 had shot it out at his mother's house at some bottles and
27 some posts that were out there in his mother's yard. And so
28 we went out there to see if we could retrieve some of the
29 projectiles out of that post or any hulls that might be out

Jack Matthews - DIRECT

1 there on the ground that we could match, see if they matched
2 the ones we had at the store.

3 Q. And did you, in fact, find some for the lab expert
4 to compare?

5 A. Yes, sir. I removed one from a post out there.

6 (Mr. Evans gets large map out and shows to Mr.
7 Carter.)

8 BY MR. EVANS: Your Honor, I offer Exhibit 108
9 which is a map.

10 BY MR. DE GRUY: Wait just a moment.

11 (Mr. de Gruy looks at the map again, confers with
12 Mr. Hill, and Mr. Hill marks on the exhibit.)

13 BY MR. EVANS: Can you give us just a minute,
14 Your Honor?

15 BY MR. EVANS:

16 Q. I want to hand you Exhibit 108 and ask if you can
17 identify what this is?

18 A. It's the town of Winona. A part of the town of
19 Winona.

20 Q. And does this map show different locations that
21 these folks we have been talking about showed you they saw
22 the Defendant?

23 A. Yes, sir. It does.

24 Q. I think it has also got the Defendant's sister's
25 house marked on there; is that correct?

26 A. Yes, sir.

27 BY MR. EVANS: I offer this into evidence, Your
28 Honor.

29 BY MR. CARTER: No objection.

Jack Matthews - DIRECT

1 **BY MR. DE GRUY:** No objection. Let it be
2 admitted.

3 (LARGE MAP OF THE CITY OF WINONA PREVIOUSLY MARKED
4 AS STATE'S EXHIBIT S-108 FOR IDENTIFICATION WAS NOW RECEIVED
5 IN EVIDENCE.)

6 **BY MR. EVANS:**

7 Q. Mr. Matthews, I'm not sure how it's going to show
8 up. I want to hand you this red marker, and the first thing
9 I want you to do is mark down Highway 51 with that red marker
10 for me. You may have to set it on something.

11 A. (Witness complies.)

12 Q. All right.

13 **BY MR. EVANS:** And may the witness step down,
14 Your Honor?

15 **BY THE COURT:** Yes, sir.

16 **BY MR. EVANS:**

17 Q. I will just try to hold this up. If you would,
18 describe for the ladies and gentlemen of the jury what it is
19 and what it shows. Step back so everybody can see.

20 A. Okay. This is--

21 Q. You are blocking some of them.

22 A. That's the location, this is the location of the
23 store right in this area, right here. And Tardy Furniture
24 Company, this is where Clemmie Fleming -- correction. This
25 is where Clemmie Fleming saw the Defendant. This is where
26 Mary Fleming, Mary Jeanette Fleming saw the subject. This is
27 where McChristian saw him coming up. I believe that is
28 Academy Street right there. Katherine Snow in the parking
29 lot of Angelica, right in this area right here.

Jack Matthews - DIRECT - CROSS

1 Q. All right. And just for the record, what is the
2 east side and which is the west side of Highway 51?

3 A. This is Highway 51 right here. And of course, all
4 of this would be on the east side, and that would be the west
5 side.

6 Q. And according to him, he was never on the east side
7 that day; is that correct?

8 A. That's correct.

9 Q. You can have a seat again. If you would, point out
10 the area of McNutt Street where he lived?

11 A. Right in that area. That is McNutt right there.

12 Q. All right. You can have a seat again.

13 A. (Witness resumes witness stand.)

14 (State's Counsel confer.)

15 BY MR. EVANS: Your Honor, I will tender the
16 witness.

17 BY THE COURT: Y'all need a break? Okay, we will
18 take a short break.

19 (FOLLOWING THE AFTERNOON RECESS, TESTIMONY OF JACK
20 MATTHEWS CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
21 DEFENDANT AND THE JURY PRESENT:)

22 CROSS-EXAMINATION BY MR. CARTER:

23 Q. Good afternoon, Mr. Matthews. I am Ray Carter.

24 A. Good afternoon.

25 Q. Now Mr. Matthews you also interviewed a Mary
26 Jeanette Fleming; is that correct?

27 A. (No response.)

28 Q. You interviewed a Mary Jeanette Fleming?

29 A. That's correct.

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1 Q. And I believe you had Chief Hargrove with you; is
2 that correct?

3 A. That's correct.

4 BY MR. CARTER: May I approach the witness, Your
5 Honor?

6 BY THE COURT: Yes.

7 BY MR. CARTER:

8 Q. Can you look at what has been marked as Defendant's
9 Exhibit D-1 and tell me whether you recognize that or not?

10 A. That's the interview we had with Mary Jeanette
11 Fleming back on February 13th of 1997.

12 Q. February 13, 1997. Did you ask her what clothing
13 Curtis Flowers had on when she saw him that day?

14 A. Well, without looking at a copy of the -- I don't
15 remember exactly what I asked her.

16 BY MR. EVANS: Your Honor, the same objection as
17 before. If we are going to go into statements, I
18 think the statements need to be in evidence if he is
19 going to be reading from it.

20 BY MR. CARTER: Your Honor, I move for admission
21 of this.

22 BY THE COURT: Why wouldn't it be hearsay?

23 BY MR. EVANS: Well, it would be.

24 BY MR. CARTER:

25 Q. You interviewed yourself Mary Jeanette Fleming; is
26 that correct?

27 A. Yes, sir.

28 Q. And can you look at this statement and tell me
29 whether or not you asked her what clothing Curtis Flowers was

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1 wearing on the day that you asked her if she saw him?

2 A. All right, there was a question that I asked her.
3 I said, "Okay, do you remember what Curtis was wearing that
4 day?"

5 Q. And what was her answer?

6 BY MR. EVANS: Your Honor, if we are going into
7 it, which it is hearsay, I object on the hearsay, but
8 if we are going to get into it, I think the statement
9 has got to be in evidence.

10 BY MR. CARTER: I move for admission of the--

11 BY MR. DE GRUY: --Your Honor, first on the
12 matter of hearsay, it is clearly not hearsay. It is
13 not being offered for the truth of the matter
14 asserted. It is being offered to show an inconsistent
15 statement. And, I mean we are not asserting that she
16 saw him at all. So it's certainly not for the truth
17 of the matter asserted. It's what she told this
18 officer in his investigation.

19 BY THE COURT: Mark it for identification first.

20 BY MR. CARTER: It's marked.

21 BY THE COURT: D-1 for identification?

22 BY THE COURT REPORTER: Yes.

23 BY THE COURT: Are you offering it?

24 BY MR. CARTER: If I need to, I will offer it.

25 BY THE COURT: I didn't ask you that.

26 BY MR. CARTER: Not yet. I want him to answer
27 without offering it but--

28 BY MR. EVANS: Which I object to him answering,
29 reading from it without it being in evidence.

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1 **BY MR. CARTER:** Well, I move for admission into
2 evidence.

3 **BY THE COURT:** All right. Let me see y'all up
4 here.

5 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
6 JURY AS FOLLOWS:)

7 **BY THE COURT:** Okay. It's extrinsic evidence of
8 a prior statement. If it has been admitted, it's not
9 admissible, if it has been admitted by her that she
10 made the statement or him--

11 **BY MR. EVANS:** Which it was.

12 **BY THE COURT:** -- then it's not admissible under
13 613(b).

14 **BY MR. EVANS:** She never denied making that
15 statement.

16 **BY MR. CARTER:** I believe--

17 **BY THE COURT:** --That is the law and case law;
18 that's the rule and case law.

19 **BY MR. CARTER:** She said he had on brown.

20 **BY THE COURT:** No. The question is you are
21 trying to admit the statement itself. If she admits
22 to making the statement, then it's not admissible when
23 she testifies.

24 **BY MR. CARTER:** She didn't admit--

25 **BY MR. DE GRUY:** I don't think she admitted to
26 it.

27 **BY THE COURT:** Did she get asked?

28 **BY MR. EVANS:** She was asked if that was what she
29 said. She said that may be what she said in the

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1 statement but that that was not it.

2 BY MR. CARTER: Your Honor--

3 BY MR. EVANS: -- So she was asked. She did not
4 deny that she made that statement. She said that is
5 probably what she did tell them.

6 BY MR. CARTER: That is not true. I asked her
7 what clothing he had on. She said he had on brown
8 pants. In her statement she told Mr. Matthews he had
9 on black pants.

10 BY MR. EVANS: And he showed her that statement
11 and asked her if she told him that.

12 BY MR. CARTER: No, I didn't. You started
13 objecting, and I didn't get a chance to.

14 BY THE COURT: Okay. I think he -- I don't think
15 the statement itself is admissible in the state of the
16 record. You can question him.

17 BY MR. EVANS: Of course, it still gets the whole
18 thing in either way, whether we question him about it
19 or introduce it, because if he goes into the
20 statement, I think I'm entitled to go into everything
21 consistent in the statement if he tries to say there
22 is nothing inconsistent--

23 BY MR. CARTER: -- I don't have no problem with
24 the statement, but that is the only question I plan to
25 ask about it. You can do what you want to. That one
26 question is the only thing I'm going to ask him about
27 that statement.

28 BY THE COURT: Do y'all both want it in?

29 BY MR. CARTER: I certainly want it in.

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1 **BY MR. EVANS:** I don't particularly want it in.
2 I mean it doesn't matter. If it's going to be in, I
3 think it ought to be in to where the jury can see the
4 whole thing, if he is going to ask about one part of
5 it. (Pause) I don't really think the whole procedure
6 is proper. I think once he has asked the witness
7 about it, that's as far as it goes.

8 **BY MR. CARTER:** That is not my understanding.
9 (Pause while the Court reads. Defense Counsel
10 confer.)

11 **BY MR. EVANS:** If he is saying it's for
12 impeachment, if she admitted that that's what she told
13 the officer, it's not admissible. And if he didn't
14 ask her about it, it's not admissible.

15 **BY MR. CARTER:** He did ask her.

16 **BY THE COURT:** Ladies and gentlemen, I need y'all
17 to go back to the jury room just a minute.

18 JURY LEAVES THE COURTROOM.

19 **BY THE COURT:** The statement -- she is the
20 declarant, and she certainly is offering that
21 statement to prove the truth of the matter.

22 **BY MR. EVANS:** Uh-hum.

23 **BY THE COURT:** Therefore, it is hearsay.

24 **BY MR. CARTER:** Also, she testified in court
25 before that she--

26 **BY THE COURT:** -- I think you can interrogate her
27 at length about it. I don't have any problem with
28 that, but you're interrogating him about it, about
29 what obviously is a hearsay statement because one of

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1 the main issues is what he was wearing. So that is
2 certainly for the, to prove the truth of the matter
3 asserted.

4 **BY MR. CARTER:** But when I questioned her, if I'm
5 not mistaken, Mr. Evans objected. I was precluded
6 from questioning her about it further because my
7 effort, my intention was to question her completely
8 about--

9 **BY MR. EVANS:** My recollection is you asked her
10 if she didn't say it was a certain color in her
11 statement, and she said it was that color on the
12 sleeves. She may have said it in the statement, but
13 it was that color on the sleeves; it wasn't all over.

14 **BY MR. CARTER:** See, Your Honor, the problem,
15 there is another witness who also said he had on white
16 pants. Now her statement, which is different than
17 what she said before, is going to gel with another
18 witness' statement. It was clear that she has always
19 said he had on black pants.

20 **BY THE COURT:** But the way to have done this was
21 to take this statement and give it to her and get her
22 to either admit or deny it. If she denied making this
23 statement, then you can admit it as extrinsic evidence
24 under 613. If she denies it, then -- I mean admits
25 it, it doesn't come in, but you can still question her
26 about it.

27 **BY MR. EVANS:** She never denied it.

28 **BY THE COURT:** Well, I mean regardless of that,
29 the procedure under the rules wasn't followed. You

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1 still could call her and question her about it.

2 BY MR. CARTER: We can recall her?

3 BY THE COURT: Well, yeah, you can call her as
4 your witness. I mean she is certainly going to be a
5 hostile witness to y'all's side.

6 BY MR. EVANS: I know we wouldn't go back and
7 read the record. She has already answered that once,
8 and she did not deny it. As a matter of fact, he has
9 asked every witness that has testified about prior
10 statements.

11 BY THE COURT: I don't recall any witness denying
12 making a statement. I don't recall that happening.

13 BY MR. CARTER: I can't remember her testimony.
14 I'm sorry.

15 BY MR. DE GRUY: Put her back on and ask her. If
16 she denies it, then we can call--

17 BY MR. CARTER: Okay, we will do that.

18 BY THE COURT: Well, at that point in time if she
19 denies it, then if she denies making the statement,
20 then you can get the statement in through her. Well,
21 I take that back; maybe not through her, but then
22 under 613 -- let me read it again, but I know that is
23 right.

24 (Pause while the Court reads.)

25 BY THE COURT: Certainly, if she admits it, it's
26 not admissible. I think if she denies it, it is. But
27 it might be, you might have to recall Matthews for the
28 purpose of doing that. I would have to think about
29 the procedure, but I think you can get it in. I think

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1 you can do that.

2 **BY MR. CARTER:** Yes, sir. One other thing, Your
3 Honor.

4 **BY THE COURT:** I just don't think you can get it
5 in this way. And that's what my ruling is that it's
6 hearsay at this point in time.

7 **BY MR. CARTER:** Your Honor, comes now the Defense
8 and moves the Court to instruct Mr. Evans and Mr. Hill
9 and anybody associated with them to not call Jeanette
10 Fleming, Mary Jeanette Fleming and instruct her that
11 she will be recalled and what she is being recalled
12 for.

13 **BY THE COURT:** Well, the rule is invoked, and
14 they can't talk to her anyhow; no more than y'all can.

15 **BY MR. CARTER:** Thank you.

16 **BY THE COURT:** And I so instruct everybody.
17 Okay?

18 **BY MR. CARTER:** Yes, sir.

19 END BENCH CONFERENCE.

20 **BY THE COURT:** Okay.

21 JURY RETURNS TO THE COURTROOM.

22 **BY THE COURT:** All right, Mr. Carter.

23 CONTINUING CROSS-EXAMINATION BY MR. CARTER:

24 Q. Okay, Mr. Matthews.

25 A. Yes, sir.

26 Q. When you got to Tardy's Furniture store that day,
27 the first person you talked to, I believe, was Mr. Hargrove;
28 is that correct?

29 A. That's correct.

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1 Q. What, if anything, did Mr. Hargrove tell you about
2 any -- strike that. What did Mr. Hargrove tell you upon your
3 arrival at Tardy's?

4 A. He told me that there had been four victims inside
5 the store. Three of them were still there, and one of them
6 had been transported to the hospital by ambulance.

7 Q. Did he tell you anything about the inside of the
8 crime scene?

9 A. No. We walked in there together.

10 Q. Did he point out anything to you?

11 A. Well, when we walked in, of course, we could see
12 the three bodies that were remaining there and also see the
13 area where the Stewart boy had been laying. There was still
14 a good bit of blood there on the floor, and I believe a cap
15 was still there on the floor. He, we pointed out the
16 footprints that he had in the, that were there at the scene
17 also. And he told me that they had been there when he and
18 Sam had gone back in the store.

19 Q. Okay, did you see any keys?

20 A. Yes, sir.

21 Q. Were they detached, or were they on somebody's
22 hand?

23 A. I think they were still attached to someone's hand.

24 Q. Do you know who detached them from--

25 A. No, I don't.

26 Q. Now Mr. Flowers cooperated with you fully on each
27 occasion; is that correct?

28 A. He did.

29 Q. Okay, do you know how he got to the police precinct

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1 the first time?

2 A. I believe he rode with some police officers.

3 Q. Who were they?

4 A. Kenneth Townsend, I believe, was a Winona police
5 department, a Winona policeman, and I think Dennis Woods was
6 the other one.

7 Q. Okay. Now I'm trying to be clear on something.
8 Did you tell Mr. Evans earlier that Mr. Flowers was fired
9 because of some, the batteries being, falling and breaking?

10 A. Well, I don't know that I used the word "fire." I
11 may have, but yeah, I did tell him that he had been let go.
12 That's what he had told me, and that's what the information I
13 had gathered at the scene.

14 Q. But the information that you gathered and what he
15 told you is that he was fired because he wouldn't go back; is
16 that correct?

17 A. That's what he told me afterwards. The first
18 information I had got was because of the batteries.

19 Q. Who gave you that?

20 A. I think I got that from, at the scene from -- I
21 don't know whether I got it from Roxanne or Frank.

22 Q. Okay. But you do agree that it's factual that
23 Mr. Flowers wasn't fired on July the 3rd, which is the day he
24 broke the batteries?

25 A. That's what I gathered from the conversation I had
26 with him on the 16th.

27 Q. Okay. And you don't have any proof that he was
28 fired on the 5th of July for the batteries being dropped, do
29 you?

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1 A. No. I think he was supposed to come back to work
2 on the 5th, and he just didn't show up.

3 Q. Okay, and he was supposed to go back, I believe, up
4 until the 9th and he just didn't show up. So he wasn't
5 fired from the 3rd until the 9th, I believe. Is that
6 correct?

7 A. Well, whatever that Tuesday was, I don't know that
8 day, but I think that was the day that he indicated that he
9 talked to her on the telephone, and she indicated that she
10 couldn't use him any more.

11 Q. Now didn't you also learn that she had been calling
12 his house asking him to return a few times?

13 A. I never did get that information.

14 Q. You never got that? Now you said that there were
15 some scratches on Mr. Flowers' hand or arm?

16 A. There was some scratches on his arm.

17 Q. Did you take pictures of that?

18 A. No. We didn't.

19 Q. Why not?

20 A. I don't know why. We probably should have, but we
21 didn't.

22 Q. Okay. And had there been pictures, we would have
23 had some kind of extrinsic proof that there was actually
24 scratches on his hand, wouldn't we?

25 A. Yes, sir.

26 Q. Now you don't have any information or you can't
27 prove that Curtis didn't, in fact, go to his sister's house,
28 can you?

29 A. No, sir.

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1 Q. Did you interview, did you personally interview a
2 Billy Glover or LaToya Harding?

3 A. I don't remember.

4 Q. Now with respect to this gunshot residue test, you
5 didn't get -- Mr. Flowers agreed to do it; is that correct?

6 A. That's correct.

7 Q. Now there was a certain amount of questions you
8 were supposed to ask him; is that correct? When you give a
9 person a gunshot residue test, you are supposed to ask a
10 certain amount of questions; is that correct?

11 A. Well, there is a form inside the gunshot residue.
12 There are some questions that you do ask him.

13 Q. Okay. It is advisable that you ask those
14 questions; is that correct?

15 A. Well, without looking at the form, I don't remember
16 exactly what those questions are. I don't know whether we
17 had already asked him the questions enough to fill out that
18 form or not in the interview.

19 Q. How many times have you done gunshot residue tests?

20 A. Oh, I don't know.

21 Q. Many?

22 A. A few.

23 Q. How many is a few, as best you can recall, as best
24 you can explain?

25 A. Oh, probably less than ten, more than five.

26 Q. Okay, and how many had you done at that time?

27 A. Probably about the same number.

28 Q. About the same number. And one of the things they
29 asked you is whether the suspect has washed his hands. Is

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1 that correct?

2 A. It could be. Without looking at that form, I don't
3 have that form memorized. I would have to look at it to see
4 what questions we asked.

5 Q. Okay. Do you know if you asked him -- I don't mean
6 to confuse you or to fight with you, but I think you might
7 have already told me. You don't remember whether you asked
8 him; is that what you are saying?

9 A. Well, if that form, on that form if it asked if you
10 have asked that question, I know that I asked him that
11 question because you go by that form. But without looking at
12 that form, I can't tell you exactly the questions that I
13 asked him that day.

14 Q. Okay, could you look at it?

15 A. Okay, I don't see on here anywhere where it says,
16 has the suspect washed his or her hands since the shooting.
17 And it's unknown.

18 Q. Said unknown. So did you ask Mr. Flowers if he
19 washed his hands or not?

20 A. I am sure I did.

21 Q. And you said -- oh, so you are saying Mr. Flowers
22 told you he didn't know? Is that what you're saying?

23 A. That's the unknown part.

24 Q. So it's unknown -- clarify for me if you can.

25 A. Well, maybe Mr. Flowers was unknown whether he had
26 washed them or not.

27 Q. You are saying maybe?

28 A. According to that.

29 Q. Okay, so you know, I'm trying to be clear.

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1 A. He didn't know whether he had washed them or not,
2 so I assumed it was unknown.

3 Q. Okay. And it says, suspect's occupation, and what
4 did you put?

5 A. I don't remember. I would have to look at it.

6 Q. What does "NA" stand for? What did you mean?

7 A. I would say not applicable.

8 Q. I mean now on this form, Mississippi crime
9 laboratory gunshot residue analysis information form, and it
10 has on here suspect's occupation?

11 A. Well, at the time we were talking to him, he didn't
12 have an occupation.

13 Q. And you wrote on here "not applicable" because you
14 didn't think--

15 A. He didn't have a job at the time, he said.

16 Q. Okay, now you didn't write on here -- did you write
17 on the form, didn't have a job?

18 A. I just put it was not applicable.

19 Q. Okay, but "not applicable," would you agree that it
20 could mean that you didn't think that mattered?

21 A. Well, I don't know that I didn't think it would
22 matter. I just knew that he didn't have a job at that time.

23 Q. Okay.

24 A. Because he had told me he didn't have a job.

25 Q. Don't you agree that you could not have a job--

26 BY MR. EVANS: --Your Honor, I object on
27 relevance. I have tried not to, but I think we have
28 pretty well covered that, and it's not relevant to
29 what we are here on.

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1 **BY THE COURT:** Let's let him finish his question.

2 BY MR. CARTER:

3 Q. Don't you agree that it's possible to not be
4 working but still have an occupation?

5 A. That is possible.

6 **BY THE COURT:** I will let him answer.

7 **BY MR. CARTER:** I am moving on.

8 BY MR. CARTER:

9 Q. Now did you ask Mr. Flowers what he was doing prior
10 to being picked up?

11 A. Well, he had, he told me that he was at his house.
12 He had just come from Kelly's One Stop, and he was at his
13 house.

14 Q. Did you ask him what he was doing at his house?

15 A. I believe he told us he was, had just come back
16 from the store, and he was drinking a beer.

17 Q. There is a portion on this form, says a brief
18 description of suspect's activity between the time of
19 shooting and the gunshot residue stubs were taken. Could you
20 look at this and tell me what you said?

21 A. Suspect was at his residence prior to questioning.
22 Activities unknown.

23 Q. Okay, let's move on. Now you said you, I believe,
24 checked Ms. Moore's children's feet; is that correct?

25 A. That's correct.

26 Q. Foot size. Did you check her oldest son Marcus'
27 foot size?

28 A. I didn't check them personally myself. I don't
29 think that at the time that I knew she had another child.

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1 Q. Okay, did you testify--

2 A. --it was sometime later on.

3 Q. I thought you said earlier - correct me if I'm
4 wrong - that you checked them? Isn't that what you testified
5 to earlier?

6 A. Lemarcus?

7 Q. No, the other two kids. Did you check the other
8 two kids?

9 A. The only two children that I inquired about was the
10 11 year old child, and I believe his name was Lemarcus and
11 the smaller child. I believe it was a female child.

12 Q. So now you are saying you didn't actually check
13 their feet, but you inquired about their feet?

14 A. I checked Lemarcus', but those were the only -- and
15 the younger child, of course, I knew that she didn't wear a
16 shoe that size. But the other, the child that was living
17 there at the house that I knew about; Lemarcus, I believe,
18 was his name.

19 Q. Okay, what did you do -- just so I will be clear,
20 what did you do to check? How did you check Marcus--
21 Lemarcus, Lemarcus, I'm sorry?

22 A. Looked at the shoe he was wearing.

23 Q. Okay. You didn't actually take a ruler or
24 anything?

25 A. No, I just looked at the shoe size.

26 Q. Now this headboard you say you saw, you found the
27 money in; weren't there shelves in this headboard?

28 A. I don't remember. I didn't actually find the money
29 myself. One of the other officers with us did, and I was

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1 present at the house when it was found, but I didn't find it
2 myself.

3 Q. Okay, did you go to the room where the bed was
4 located?

5 A. I did.

6 Q. Did you see him take the money out of the
7 headboard?

8 A. I don't remember that I saw him actually remove the
9 money from the headboard.

10 Q. So based on your personal knowledge, do you know
11 exactly where the money came from?

12 A. No, I do not.

13 Q. Now this lineup where Ms. Snow supposedly picked
14 Mr. Flowers out of a lineup; this occurred on August the
15 19th, I believe, 1996; is that correct?

16 A. I would have to look back. I don't know exactly.

17 Q. Do you have something where you can look and check
18 right quick?

19 A. I don't have anything with me.

20 Q. So it could have been?

21 A. Could have been; yes, sir.

22 Q. Now Mr. Flowers told you repeatedly that he didn't
23 have a problem with Ms. Tardy; is that correct?

24 A. That's correct.

25 Q. And he also told you that he didn't tie the
26 batteries down, and he knew he should have, and therefore he
27 didn't have a problem with her taking the money if she was
28 going to do it? Is that correct?

29 A. That's what he indicated. Yes, sir.

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1 Q. Now Mr. Matthews, now Curtis -- you talked to
2 Curtis twice. The first time it was you, Mr. Johnson and
3 Mr. Miller, I believe. Is that correct?

4 A. I believe the first time it was only myself and
5 Mr. Johnson, and the next time that we talked, I believe it
6 was myself and Mr. Miller.

7 Q. Mr. Miller, okay. Now the first time when you
8 called Mr. Flowers in, you sent for him? How did it come
9 about that Mr. Flowers found out he needed to come up to the
10 police department and talk to you? What happened? How did
11 that transpire?

12 A. We asked one of the police officers if he would
13 mind, stated that he knew him; if he would come back and we
14 would go out and see if he could find him and see if we could
15 get him up here and see if we could talk to him.

16 Q. Who was that?

17 A. I think it must have been Mr. Townsend, or we may
18 have asked the Chief. I don't remember exactly who we asked.

19 Q. And by that time I assume that the check in Tardy's
20 had been located that had Mr. Flowers' name on it. Is that
21 correct?

22 A. Could have been at that time. I'm not positive
23 that it had been at the time.

24 Q. Is there any other way or any other reason --
25 strike that. As best you can recall, tell me what was it
26 that you found that caused you to become interested in
27 talking to Mr. Flowers?

28 A. Well, we had the information that he had been a
29 previous employee and that he had been let go or he either

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1 didn't show back up for work. He was just someone that we
2 wanted to talk to.

3 Q. And isn't it a fact as far as you know, that you
4 and this other gentleman -- I apologize for not remembering
5 the name -- is the first two police officers that actually,
6 as far as you know, talked to Mr. Flowers?

7 A. As far as I know. About that, about the situation
8 at Tardy's, yes, sir.

9 Q. So would it be true that prior to Mr. Flowers
10 coming to the police department and talking to you, and was
11 it Mr. Johnson?

12 A. Johnson.

13 Q. Johnson, he didn't actually know that he was being
14 looked at as a suspect? Prior to Mr. Flowers being told to
15 come talk to you and Mr. Johnson, Mr. Flowers -- strike that.
16 Do you have any information, any evidence that Mr. Flowers
17 knew he was a suspect in this crime prior to your sending for
18 him?

19 A. Well, I don't have any personal knowledge of that.

20 Q. Okay. Now Mr. Matthews, I believe you testified
21 that Mr. Flowers, you talked to him the first time on July
22 the 16th, 1996, and I think the second time on July the 18th,
23 1996. Am I correct?

24 A. That's correct.

25 Q. Now by the second time on July the 18th, isn't it a
26 fact that Mr. Flowers knew by that time he was a suspect?

27 A. Well, I don't know what he knew by that time. I
28 can't answer that.

29 Q. Okay. When he came in the first time, you read him

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1 his rights and told him he had a right to a lawyer and all
2 this kind of stuff; right?

3 A. I read him his rights, yes, sir. I sure did.

4 Q. And you told him he had a right to remain silent;
5 is that correct?

6 A. That's correct.

7 Q. And when he came back the second time?

8 A. Yes, sir.

9 Q. As a matter of fact, was it the first visit that
10 you took his shoes, or was it the second visit? On one of
11 those occasions I believe you took his tennis shoes?

12 A. It was not the first visit.

13 Q. The second visit you took his tennis shoes?

14 A. We could have the second time. Could have been.

15 Q. Okay. Now is it your opinion that Mr. Flowers
16 changed his story so that he could fit his whereabouts around
17 the time of the crime? Is that what you are telling us?

18 A. Well, the statements that he gave us on the 16th
19 and the statements that he gave, some of the statements that
20 he gave us on the 16th and some of the statements that he
21 gave us on the 18th were, some of his whereabouts were at
22 different times.

23 Q. Okay, so the two statements conflicted; would that
24 be fair to say?

25 A. Yes, sir.

26 Q. Now if Mr. Flowers -- wouldn't you agree with me
27 that if Mr. Flowers killed the people at Tardy's, that he
28 would have known what time he did it. Is that correct?

29 A. Repeat that.

Jack Matthews - CROSS

1 Q. If Mr. Flowers actually killed the people at
2 Tardy's, isn't it likely that he would have known what time
3 the crime occurred even before you talked to him the first
4 time?

5 A. If he-- yeah. He would have known it.

6 Q. Okay. So therefore don't you agree that it doesn't
7 make sense the conclusion that he changed his story to fit
8 around the time the crime occurred?

9 A. I don't know why he gave us two different times. I
10 can't answer that. I don't know that.

11 Q. Now Mr. Matthews, exactly when did you learn that
12 those footprints inside of Tardy's were possibly left by Fila
13 shoes?

14 A. Could have been a day or so after the crime.

15 Q. Okay. And do you recall when you found out for
16 sure scientifically that they were left by Fila shoes? How
17 much time, I guess occurred between the two periods of time
18 if you can recall?

19 A. It was pretty, pretty close to the date of the
20 crime. It may not have been the same day of the crime, but
21 it was a day or two after that that we knew that that type of
22 shoe possibly left that print.

23 Q. Okay, now how did you find out initially that it
24 possibly was a Fila, whether it was scientifically or just by
25 conjecture?

26 A. Well, I think we went to -- Officer Miller, I
27 believe, went to the shoe stores and looked at a copy, you
28 know, of those prints and tried to determine maybe what kind
29 of shoe print, you know, what kind of shoe sole left that

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1 print.

2 Q. Okay. So by the time you interviewed Mr. Flowers
3 the second time, do you recall whether you knew whether it
4 was Fila or what?

5 A. We probably knew that Fila was in the, could
6 possibly be it, but I don't know that we knew definitely at
7 that time.

8 Q. Now I want to be clear on something. You
9 interviewed - correct me if I'm wrong - Katherine Snow?

10 A. (Witness nods his head.)

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. Patricia Hallmon; is that correct?

14 A. I could have. I just don't remember whether I did
15 or didn't.

16 Q. You do know who Patricia Hallmon is, don't you?

17 A. (No immediate response.)

18 Q. The lady -- well.

19 A. I don't, I don't know.

20 Q. You are not sure?

21 A. I'm not sure.

22 Q. Mary Jeanette Fleming, did you interview her?

23 A. Yeah, I did interview her.

24 Q. And you interviewed Clemmie Fleming?

25 A. I did talk to her.

26 Q. Who else did you interview? Do you recall? Was it
27 a real large number?

28 A. Well, we talked to, you know, a number of people.
29 I don't know that I can remember every one of them we talked

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to.

Q. Okay. Now who was the chief investigator on this case? Was it you?

A. Myself and Officer Miller.

Q. Now how much control, if any, did you have over John Johnson?

A. Control?

Q. Control with respect to monitoring, checking his works or--

A. Well.

Q. -- checking with him about what was going on?

A. Well, he lived here in Winona. And we have always worked real close with the District Attorney's Office, and as far as anybody having control over the other one, there is no control, but we did confer on this case.

Q. Did he have to consult with you, consult with you or call you to get your approval to do anything, or was he allowed to just kind of freelance on his own, just let you know what happened?

A. Well, some things he did on his own, and some information, you know, that he passed along as we were working on the case together.

Q. Would he ever--

A. -- We have consulted a good bit.

Q. Did he ever have to get your approval to do anything before he did it?

A. Well, I don't know that he ever had to get my approval.

Q. Okay. Now did you make some final summary or

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1 report that set forth the entire case in some document?

2 A. Well, we wrote a report and, of course, turned over
3 all the statements that we had and all the evidence that we
4 had to the District Attorney's Office.

5 Q. Okay. What exactly do you write, did you write?
6 Do you remember?

7 A. Well, I wrote a report and also turned over some
8 statements that we took.

9 Q. Did you write anything more than a one page report?

10 A. Without looking at the report, I don't know.

11 Q. So you don't remember what you wrote?

12 A. I remember I wrote a report. I mean I don't
13 remember exactly what all was in it, you know. I mean I know
14 about what was in it, but I don't know--

15 Q. -- I'm not asking you what was in it. And this was
16 a large case, a big case?

17 A. It was.

18 Q. Okay. And as a chief investigator, what were your
19 responsibilities? Tell the jury what your responsibilities
20 were.

21 A. Well, we gathered evidence. We -- crime lab
22 reports, autopsy reports, statements from witnesses.

23 Q. So do you recall doing a final, for lack of a
24 better way of explaining it, big report that explained your
25 findings and step by step process of reaching--

26 A. -- No, I probably did not write that report; no,
27 sir.

28 Q. Now there has been a lot of talk about checking
29 people's shoes and making sure that the crime scene wasn't

Jack Matthews - CROSS

1 contaminated or disheveled in some kind of way that it
2 shouldn't have been. Did you personally check anybody's
3 shoes for the type of footprint it would leave?

4 A. Yes, I did.

5 Q. Could you tell us who you checked?

6 A. Well, I talked to -- Mr. Sam was the first one that
7 came in. We checked his shoes. We checked Johnny Hargrove's
8 shoes. We checked the ambulance service; we checked their
9 shoes. And when I talked to Chief Hargrove, that's who he
10 said were the only people who had been in that area since he
11 had been there. He was the first to arrive and meet Mr. Sam
12 before they walked in there. And he was there at the scene
13 when I arrived.

14 Q. Okay. Do you have any idea about how many people,
15 since you are the chief investigator, do you have any record
16 that set forth exactly who came into the building from the
17 time that you were there until you left?

18 A. Well, I know that, I know that before I arrived
19 there, Mr. Sam and Chief Hargrove and the ambulance service
20 crew had come in there. And then after I got there and after
21 the crime lab arrived and Melissa Schoene got there, we
22 turned the crime scene over to them.

23 Q. Okay, my question is did you make a record? Do you
24 have--

25 A. -- I knew those people were there.

26 Q. My question--

27 A. -- had been there before.

28 Q. My question is did you, Mr. Matthews, make a record
29 of who came--

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1 A. --Well, I probably wrote some notes down as to who
2 was there at the time.

3 Q. You probably did?

4 A. Well, I kept up with who was told and who was there
5 before I got there. Yes, sir.

6 Q. Okay, how did you keep up? What did you do?

7 A. Well, it wasn't that many people. I could keep
8 that in my head.

9 Q. What did you do -- oh, you kept it in your head?
10 So you didn't make any written record?

11 A. I could have made a written record. I just don't
12 remember whether I wrote their names down or not.

13 Q. Don't you think it is pretty important to know
14 exactly who went in and who came out?

15 A. Well, I thought I knew who had been there.

16 Q. And wouldn't that -- I don't have a good memory and
17 you probably do, but is this the kind of thing that you would
18 rely solely on your memory?

19 A. Well, in this case I know who was, what I did when
20 I got there, and I know who I talked to that day as to who
21 had been in the store before I got there.

22 Q. Okay, I'm talking about from the time that you were
23 there until you left, did you make a mental note and any
24 written notes of who came in during the period of time that
25 you were there?

26 A. Well, I'm sure that I wrote some notes down as to
27 what time I got there and who I talked to.

28 Q. Okay, I must be asking some really difficult
29 questions. Let me ask you one more time.

Jack Matthews - CROSS

1 A. Sir?

2 Q. Let me ask you this one more time. I'm going to
3 try to be clear, as simple as possible. Did you make a list
4 - maybe I should have said list - of persons who came to
5 Tardy's, who came into the building and exited the building
6 from the time you got there until the time you left, a
7 written list?

8 A. I don't remember.

9 Q. Okay. Who are those people right there, Mr.
10 Matthews?

11 (NOTE: Mr. Carter is holding photo blowup of front
12 of Tardy's store.)

13 A. I don't know.

14 Q. And would it be fair to say that it looks like it
15 was three people? Two or three. I think if you look at the
16 legs, it might look like three.

17 A. It looks like three.

18 Q. Now your mental notes or written notes, if you made
19 one, would it have comprised people who came into the
20 building as well as people who stood outside the building?

21 A. Well, I'm sure that I wouldn't have a list of all
22 the folks that came outside the building.

23 Q. Okay, now if they came in the roped off area, would
24 you make a notation of that?

25 A. I don't know that I would have done that either. I
26 may have been inside the building.

27 Q. So you may have been inside?

28 A. I could have at that time. I could have been
29 inside.

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1 Q. But you wasn't inside the building the entire time,
2 were you?

3 A. No, sir.

4 Q. In fact, how much time did you spend on the
5 outside? Do you recall?

6 A. I don't remember.

7 Q. Now you took this kit, I believe, yourself to the
8 crime lab; is that correct? I'm sorry; the gunshot residue
9 kit, I believe you took it to the crime lab yourself? Is
10 that correct?

11 A. Without looking at the crime lab report, I probably
12 did.

13 Q. Now this injury that you said to Mr. Flowers' hand,
14 where was it located? I mean not hand, but body or arm or
15 hand or wherever?

16 A. I believe it was on his left arm.

17 Q. Was it left arm?

18 A. Uh-hum. Kind of in his forearm area.

19 Q. Okay, did you ask him how he got it?

20 A. Yes, I believe we did.

21 Q. What did he say?

22 A. He just said he had some scratches from something,
23 I believe. I'm not--

24 Q. Okay, you didn't make any notes or anything of
25 that?

26 A. No, sir.

27 Q. There was four people had been killed and you've
28 got a gentleman in your office who you at least thought
29 possibly, or at least you were checking out as a person that

Jack Matthews - CROSS

1 possibly might have been involved; is that correct?

2 A. That's correct.

3 Q. And you saw scratches on him; is that correct?

4 A. That's correct.

5 Q. Did you see any blood?

6 A. No, sir.

7 Q. And the person admitted having scratches and told
8 you how he got it, but you didn't memorialize it or document
9 it in any way?

10 A. No, sir.

11 Q. And I believe there were, Mr. Johnson was there
12 also, wasn't he?

13 A. Yes, sir.

14 Q. Now when it comes to taking a gunshot residue test,
15 it is important to not shake hands with the person; is that
16 correct? You shouldn't shake your hand with a person that
17 you are about to give a gunshot residue test; is that
18 correct?

19 A. I don't know that, you know -- I don't know that
20 that would make a difference or not, but I'm sure that, you
21 know, it probably wouldn't be the best thing to do.

22 Q. Now isn't it a fact that gunshot residue rules say,
23 instruct that you shouldn't shake the hands of a person?

24 A. I don't know. I would have to look at the thing.
25 I don't know that they do.

26 Q. Did you shake Mr. Flowers' hands?

27 A. No, I did not.

28 Q. Do you know if anybody else shook his hand?

29 A. I don't know that.

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1 Q. One moment. I am trying to wrap up. Do you know
2 whether the other victims still had money on them when you
3 got in the building there at Tardy's?

4 A. No. I didn't do anything with the victims.

5 Q. One moment. Were you able to dispute -- I know you
6 said earlier that Mr. Flowers denied going on the east side
7 of town, and you were able to determine that he did. But can
8 you -- did you gather any evidence that disputed that he went
9 to the houses of the people that he claimed he went to?

10 A. You are talking about to his sister's house and to
11 the store?

12 Q. Right. You weren't able to dispute those, were
13 you?

14 A. No, I know he went to the store.

15 Q. One moment.

16 (Defense Counsel confer.)

17 Q. Now do you know a Doyle Simpson?

18 A. Yes, sir.

19 Q. You interviewed him; is that correct?

20 A. Yes, sir.

21 Q. In fact, he showed you where the gun had been shot;
22 is that correct?

23 A. Yes, sir.

24 Q. Okay, did you ask him where he got the gun from?

25 A. Yes, sir. We did.

26 Q. And he told you he got it from his brother; is that
27 correct? He told you he got it from his brother; is that
28 correct?

29 A. No, sir. No, sir.

Jack Matthews - CROSS

1 Q. Where did he say he got it from?

2 A. At first he told us he got it from, I think it was
3 an uncle that lived down in New Orleans.

4 Q. Okay, a relative?

5 A. Some relative.

6 Q. And the second time he told you he got it from
7 whom?

8 A. The second time he told us he got it from a man by
9 the name of Ike, and I don't remember what Ike's last name
10 was.

11 Q. Okay, did you talk to Ike?

12 A. Yes, we did.

13 Q. What is Ike's occupation?

14 A. I don't know.

15 Q. Did you happen to make any effort to determine how
16 far Curtis Flowers' house is from, his house to Tardy's
17 furniture store?

18 A. We did.

19 Q. How far was it?

20 A. I don't remember exactly how far it was.

21 Q. Did you bring any of your notes with you?

22 A. No, I didn't.

23 Q. Does it appear to be about a mile and a half,
24 somewhere around a mile to a mile and a half?

25 A. That sounds about, about right.

26 Q. Now whatever gun was used to commit these murders,
27 that gun was never found; is that correct?

28 A. That's correct.

29 Q. And if, in fact, Fila tennis shoes, Grant Hill

Jack Matthews - CROSS

1 tennis shoes were used in the murders, they were never found
2 either; is that correct?

3 A. That's correct.

4 Q. And as far as you know, whatever clothes were used
5 in the murder, they were never located?

6 A. No, sir.

7 Q. Now I'm a little worried about -- the tree that
8 y'all found the projectiles in; is there some kind of police
9 procedure that says -- strike that. Why is it that you
10 didn't photograph that?

11 A. I just didn't. I don't know why; we probably
12 should have, but we didn't.

13 Q. Isn't it a good idea to take pictures of crime
14 scenes or take pictures of evidence so that you have an
15 extrinsic or collateral way of showing what occurred rather
16 than having to rely on memory and just personal testimony?

17 A. Well, we probably should have took pictures of the
18 post, but we didn't. We didn't know that what we were
19 digging out had any relevance to the case.

20 Q. I think I'm about finished. Hold on a second.
21 (Pause.) Now with respect to Doyle Simpson, did you go to
22 Angelica's that day after the murders occurred?

23 A. Yes, sir. I did.

24 Q. Did you talk to Doyle Simpson there?

25 A. I did.

26 Q. And were you able to determine pretty much his
27 whereabouts the morning of July 16, 1996?

28 A. Yes, I was.

29 Q. And as far as you knew, was he on the clock and at

Jack Matthews - CROSS

1 work except for the brief period of time that he went outside
2 and moved his car?

3 A. Yes, sir.

4 Q. Isn't it a fact that for at least 45 minutes, he
5 wasn't on the clock and wasn't at his work station?

6 A. I think that was sometime after he had left to go
7 to lunch, sometime after about 11 o'clock.

8 Q. So you don't have any information that set forth
9 that he was actually missing or not at his work station and
10 not clocked in for 45 minutes prior to going to pick up the
11 lunches for everybody?

12 A. I don't have any recollection of that.

13 Q. Did you check to make sure that he was at work and
14 that he had no unexplained time sequences--

15 A. I did. I talked to two of his supervisors there,
16 and they said that he was at that location that morning.

17 Q. Okay. Now Mr. Matthews, isn't it a fact that you,
18 despite all of the investigation and all the people you
19 talked to, you don't have a single person who said that they
20 saw Curtis go into the Tardy's and exit Tardy's?

21 A. That's correct.

22 Q. Now I noticed that on the first time you talked to
23 Mr. Flowers you didn't tape it; is that correct?

24 A. That's correct.

25 Q. Why didn't you tape it the first time? Was there
26 any particular reason?

27 A. We just, we were just on, just trying to determine
28 his whereabouts and the deal about the batteries and that
29 kind of information. It was just a fact finding information

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1 of someone who was of interest, and we did not tape record it
2 at that time. I think Mr. Johnson did take some notes.

3 Q. Did you also talk to Emmitt Simpson? Do you know
4 an Emmitt Simpson?

5 A. I do.

6 Q. Did you interview him?

7 A. That's right. Yes, sir.

8 Q. And were you able to account for his entire day?

9 A. Yes, sir. I don't know that we accounted for his
10 entire day. We accounted from the time that he got to work
11 that morning until we interviewed him there at his place of
12 employment.

13 Q. I apologize. I didn't ask the question right. Now
14 Mr. Flowers was arrested, I believe, in January of 1997; is
15 that correct?

16 A. That's correct.

17 Q. Do you know if a reward had been posted?

18 A. There was some reward that had been posted back
19 earlier.

20 Q. Okay, when did you first learn that a reward was
21 available?

22 A. I don't remember the exact day, but it was not too
23 long after the incident happened, maybe a couple of weeks or
24 so.

25 Q. Now isn't it true that by the time you talked to
26 Clemmie Fleming, Mary Jeanette Fleming, that not only a
27 reward was available; Mr. Flowers had already been arrested;
28 is that correct?

29 A. I know that by the time we talked to Mary Jeanette

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Fleming, I know that, and possibly Clemmie also.

BY MR. CARTER: I think I'm finished. One second.

(Defense Counsel confer.)

BY MR. CARTER: No further questions.

BY THE COURT: Let me see y'all up here before you redirect.

(CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE JURY AS FOLLOWS:)

BY THE COURT: I say this in the interest of saving us some time down the road. If you are going to call Ms. Snow back, then I think what you should do at this time is have him identify this statement as being Ms. Snow's and whatever particular, like it's signed or whatever like that, just to identify it. Then if she testifies and she denies it, then it's admissible then without you having to call him back.

BY MR. EVANS: That is fine. We don't have any problem --

BY THE COURT: --I think that is the procedure--

BY MR. EVANS: --with just going ahead and marking it for identification. It is already--

BY MR. CARTER: Mary Jeanette.

BY MR. EVANS: No, it's Mary Jeanette Fleming.

BY THE COURT: Okay, whichever one y'all intend to do.

BY MR. EVANS: We have no problem with us just agreeing to mark it for identification.

BY MR. CARTER: As a matter of fact, I think I

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1 already did it, didn't I?

2 BY MR. EVANS: Yeah, I think so.

3 BY THE COURT: It is marked for identification,
4 but he has never testified that that is her statement.

5 BY MR. CARTER: I will do it again, Your Honor,
6 but I think I did.

7 BY THE COURT: Well, I don't think you did.

8 BY MR. CARTER: Okay.

9 BY THE COURT: Wait a minute. Let me say this.
10 Or y'all can stipulate--

11 BY MR. EVANS: It's not going to be contested.

12 BY THE COURT: What is the number on it?

13 BY MR. DE GRUY: It is already marked as
14 Defendant's--

15 BY THE COURT: -- I'm going to read it for the
16 record. It is stipulated -- if this is incorrect,
17 y'all tell me. The parties are stipulating that D-1
18 for identification is the statement of Mary Jeanette
19 Fleming, a written statement of Mary Jeanette Fleming
20 given to Officer Matthews on February 13, 1997, at
21 11:08.

22 BY MR. EVANS: This is a transcript of it.

23 BY THE COURT: That's a transcript of it.

24 BY MR. CARTER: (Mr. Carter nods his head.)

25 BY THE COURT: And I assume unsigned?

26 BY MR. EVANS: Yes, sir.

27 END BENCH CONFERENCE.

28 BY THE COURT: Okay, Mr. Evans.

29 BY MR. EVANS: Thank you, Your Honor.

Jack Matthews - REDIRECT

REDIRECT EXAMINATION BY MR. EVANS:

Q. Just a few things I want to go back over with you. If I understood you right, you were able to verify where Doyle Simpson and Emmitt Simpson were on the morning of the murders; is that correct?

A. That's correct.

Q. Now you were asked about scratches on the Defendant's arm and why you didn't write that down. I believe a few minutes ago you said that during that first interview, John Johnson was taking notes; is that right?

A. That's correct.

Q. Did you also have a chance to look over those notes and initial them?

A. Yes, sir. I did.

BY MR. EVANS: May I have this marked for identification, Your Honor?

BY THE COURT: Yes, sir.

(NOTES MADE BY JOHN JOHNSON WERE MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT S-118 and shown to Defense Counsel.)

BY MR. EVANS:

Q. Mr. Matthews, would it refresh your memory to be able to look over those notes?

A. Yes, sir.

Q. I will hand you Exhibit 118 for identification and ask if you would look over that?

BY MR. CARTER: Your Honor, I object to his reading from a statement that he didn't make and that is not already admitted into evidence.

Jack Matthews - REDIRECT

1 **BY THE COURT:** He hasn't asked him to read from
2 it. He asked him if he wanted to refresh his memory
3 from it. He can't read from it until such time as it
4 is in evidence.

5 **BY MR. EVANS:** Yes, sir.

6 (Pause while the witness reads.)

7 **BY THE WITNESS:**

8 A. Okay, sir.

9 Q. Have you had a chance to look over the notes that
10 y'all took that day?

11 A. Yes, sir.

12 Q. Does that refresh your memory?

13 A. Yes, sir.

14 Q. Did you ask him about what happened to his arm and
15 why he had the scratches on it?

16 A. Yes, sir.

17 **BY MR. CARTER:** Your Honor, I object to his
18 replying or giving a response based on something he
19 read from a statement that he didn't make because it
20 is not admissible at this point, and it can't be
21 admitted through this witness.

22 **BY THE COURT:** Overruled.

23 **BY MR. EVANS:**

24 Q. You may answer. Did you ask him about that?

25 A. Yes, sir. He said he ran into something.

26 Q. And that was his only response to you?

27 A. Yes, sir.

28 Q. Mr. Matthews, the Exhibits 81 and 82 which have
29 been identified as the projectiles that were dug out of the

Jack Matthews - REDIRECT

1 post, who all was present when these were dug out?

2 A. Myself and Mr. Thornburg.

3 Q. Okay, is this the projectiles that y'all dug out of
4 the post?

5 A. Yes, sir.

6 Q. Is it the projectiles in the post that Doyle
7 Simpson carried y'all to and said he had fired that gun into?

8 A. Yes, sir.

9 Q. Did you, Sheriff Thornburg, or anybody else put
10 anything in those envelopes other than what you dug out of
11 that post?

12 A. No, sir.

13 BY MR. CARTER: Your Honor, I object to that.

14 Although it's too late, that is improper redirect.

15 BY THE COURT: Overruled.

16 BY MR. EVANS:

17 Q. Now you were asked by Defense Counsel if you could
18 prove that he did not go to his sister's house on that day.
19 According to his statement, even if he went to his sister's
20 house, it was after the murders, wasn't it?

21 A. That's correct.

22 BY MR. CARTER: Your Honor, I would like to
23 interpose an objection and move for a curative comment
24 from the Judge. According to my understanding, Mr.
25 Flowers has never said he went to his sister's house
26 after the murders.

27 BY MR. EVANS: He said he went from 11 to 12
28 o'clock, and I think it is clear.

29 BY THE COURT: Those are questions of facts for

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1621-1770

VOLUME 19 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Jack Matthews - REDIRECT

1 the jury, and they have to determine that. They have
2 heard all the evidence. They will determine that
3 ultimately.

4 BY MR. EVANS: One second, Your Honor.

5 (State's Counsel confer.)

6 BY MR. EVANS:

7 Q. You have described about being an instruction form
8 in the gunshot residue kit. What efforts did you make to
9 follow those instructions?

10 A. I followed them every step.

11 BY MR. EVANS: Your Honor, I think that's all we
12 have of this witness.

13 BY THE COURT: All right, Mr. Matthews, you may
14 step down, but you are not finally excused.

15 WITNESS LEAVES THE COURTROOM.

16 BY THE COURT: Okay, ladies and gentlemen, we are
17 going to call it quits for today. I will give you the
18 same instructions as I gave you yesterday. You are
19 still not to discuss it amongst yourselves nor are you
20 to form any opinions about this matter because you
21 still haven't heard all the evidence nor have you
22 heard my instructions on the law. I will see y'all in
23 the morning at 9 o'clock.

24 (TRIAL WAS RECESSED FOR THE DAY ON FEBRUARY 9,
25 2004, AT 5:45 PM.)

26 **FILED**

27 APR 14 2004

28 JULIE H. HALFACRE, CIRCUIT CLERK

29 BY _____ D.C.

Roxanne Ballard - DIRECT

(COURT WAS REOPENED ON FEBRUARY 10, 2004, WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT.)

BY THE COURT: Before we get started, let me see y'all up here.

(CONFERENCE AT THE BENCH.)

BY THE COURT: Who are y'all going to have first?

BY MR. EVANS: Roxanne Ballard.

BY THE COURT: Okay.

BY THE COURT REPORTER: Will you turn on the amplifier?

BY THE COURT: This is just a preliminary thing.

BY MR. CARTER: Who have you got first?

BY MR. EVANS: Roxanne.

BY THE COURT: Before you call Odell, I want to go over some stuff with y'all.

BY MR. EVANS: All right.

END BENCH CONFERENCE.

BY THE COURT: Y'all ready?

BY MR. EVANS: Yes, sir.

JURY ENTERS THE COURTROOM.

ROXANNE BALLARD,

a white female called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: State your name, please, ma'am.

BY THE WITNESS: Roxanne Miller Ballard.

BY MR. HILL: May I proceed, Your Honor?

DIRECT EXAMINATION BY MR. HILL:

Q. Good morning, Ms. Ballard.

Roxanne Ballard - DIRECT

1 A. Good morning.

2 Q. Ms. Ballard, I want to -- just before we begin, I'm
3 going to ask you, if you will, as you are responding to my
4 questions, if you will speak slightly loudly so everybody can
5 hear you. Okay?

6 A. Okay.

7 Q. Ms. Ballard, will you tell us where you live,
8 please?

9 A. In Winona, Mississippi.

10 Q. How long have you been a resident of Winona?

11 A. Over 30 years if you don't include college.

12 Q. Can you tell us -- speaking of college, can you
13 tell us a little bit about your education, please?

14 A. I have a B.A. in sociology from Millsaps, and I
15 took the undergraduate prerequisite to get into the master's
16 program in accounting, and I have a Master's in accounting
17 from Ole Miss.

18 Q. And have you ever done any accounting work?

19 A. Yes. My first job was as an auditor for Seidman in
20 Memphis, B.D.O. Seidman in Memphis, and I have been doing
21 that continually since 1990.

22 Q. Did you know Bertha Tardy?

23 A. Yes.

24 Q. Would you tell the ladies and gentlemen of the
25 jury, please, what your relationship to her was.

26 A. She is my mother.

27 Q. Ms. Ballard, were you familiar with Tardy Furniture
28 store?

29 A. Yes. Certainly, I was.

Roxanne Ballard - DIRECT

1 Q. Do you know who owned Tardy Furniture store?

2 A. My mother, Bertha Tardy.

3 Q. Were you familiar -- well, let me rephrase that.

4 You have stated that you were familiar. Would you tell us
5 how you became familiar with Tardy Furniture, please.

6 A. Well, I don't remember any time that I wasn't
7 growing up in that store. I was there from when I was weeks
8 old all the way up until now, and did everything that you
9 could do there almost, from dusting all the way up to record
10 keeping and accounting.

11 Q. Did you ever, were you ever a regular employee of
12 the store?

13 A. Yes, I was.

14 Q. In what capacity?

15 A. As the -- well, Mama called me the comptroller, but
16 I did everything that you could possibly do in an accounting
17 context from doing the check-up sheets to posting things to
18 the ledger. Everything was manual back then, so we did
19 everything manually -- the payroll, the sales tax, the taxes,
20 the payroll taxes, the monthly P and L sheets, everything.

21 Q. Did that work there include all kinds of accounting
22 and bookkeeping service?

23 A. Yes, it did.

24 Q. Are you familiar with the routine business
25 practices and the normal operating procedures of the store?

26 A. Yes. Certainly.

27 Q. And is that based on your years of work there and
28 knowledge of the store?

29 A. Yes.

Roxanne Ballard - DIRECT

1 Q. Did you know Carmen Rigby?

2 A. Yes, I did. Very well.

3 Q. Did you ever work with her?

4 A. Yes, I did.

5 Q. What was her job at the store?

6 A. Carmen was the credit manager, a sales person. She
7 did the daily check-up sheets. She helped us buy at market,
8 helped manage the deliveries, every--

9 Q. Approximately how long did you know Carmen?

10 A. For 20 years.

11 Q. During that 20 years that you knew her and the time
12 that you worked with her, did you ever have occasion to see
13 her writing? By that question I mean did you ever actually
14 see her writing things, and did you ever have occasion to
15 examine the writings that she made on a regular basis?

16 A. Yes.

17 Q. Would you tell us if you can, please, Ms. Ballard,
18 about the normal opening procedure. In other words, you have
19 testified that you are familiar with the regular and routine
20 business practices. Will you tell us what the routine
21 opening procedure was. In other words, when y'all, when you
22 or someone, your mother or someone went to open the store,
23 what was the normal process for opening up?

24 A. Mama almost always opened up unless she was out of
25 town or sick. And the first thing she did was unlock the
26 door, walk about halfway back in that side of the building
27 where the front door was, and turn on the main panel lights
28 on that side of the building. Then she would go on back to
29 the very, very back to her office and turn that light on and

Roxanne Ballard - DIRECT

1 unlock the safe and take out the little metal drawer that fit
2 inside the cash drawer in the office and the accounts
3 receivable book and the deposit bag that had the deposit book
4 in it and the receipt book.

5 Q. Were you aware of and familiar with the regularly
6 kept business records of Tardy Furniture store?

7 A. Yes.

8 Q. And in your time I suppose that you generated a lot
9 of those records?

10 A. Yes, I did.

11 Q. As an accountant, I would imagine -- if this is
12 incorrect, you can tell me -- I would imagine that you were
13 familiar with all the store's documents and records having to
14 do with financial matters and such as that?

15 A. Yes, sir. I was. Everything.

16 Q. Ms. Ballard, you recall July 16, 1996, I'm sure?

17 A. Yes, sir.

18 Q. Shortly after that day, did you have occasion to
19 provide some documentary evidence to the investigators?

20 A. Yes, sir. I provided, was able to find easily
21 accessible everything they asked for and show them where the
22 daily check-up sheet, everything was.

23 Q. Okay, first of all, I would like to show you two
24 photographs. They are State's Exhibits 34 and 35 for
25 identification. Would you just look at those photographs,
26 Ms. Ballard, and see if you can recognize what they show?

27 A. It's the main counter at Tardy Furniture, the way
28 it was then, and there is a bunch of catalogs and fabric
29 swatches and the deposit bag.

Roxanne Ballard - DIRECT

1 Q. Okay.

2 (Mr. Hill shows photograph to Mr. Carter.)

3 Q. Do these photographs truly and accurately depict
4 the showing of the money bag on the counter?

5 A. Yes.

6 BY MR. HILL: Ask that they be received.

7 BY MR. CARTER: No objection.

8 BY THE COURT: Let them be admitted as evidence.

9 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
10 S-34 AND S-35 FOR IDENTIFICATION WERE NOW RECEIVED IN
11 EVIDENCE.)

12 BY MR. HILL:

13 Q. Ms. Tardy -- I'm sorry. Ms. Ballard, I'm now going
14 to hand you State's Exhibit number 36. Would you look at
15 that, please.

16 A. (Witness complies.)

17 Q. Do you recognize that?

18 A. (Witness nods her head.)

19 Q. What is that, please?

20 (NOTE: Witness is crying.)

21 A. It's the Sunburst Bank bag that we referred to as
22 the deposit bag because that's the one that went back and
23 forth to the bank.

24 Q. Is there a deposit book in there?

25 A. Yes.

26 Q. Would you flip to the last deposit entry, please,
27 ma'am.

28 A. (Witness complies.)

29 Q. Is there a date stamp on there to show when the

Roxanne Ballard - DIRECT

1 last deposit was made?

2 A. July 16, 1996.

3 Q. Do you recognize the writing on there? Whose
4 writing is that?

5 A. Yes, sir. It's Carmen's. Carmen.

6 Q. Okay. Thank you, ma'am. I will take that for you.
7 Ms. Ballard, is this deposit book, State's Exhibit number 36,
8 the same deposit -- the same bank bag deposit bag and deposit
9 book that are shown in the two photographs that have just
10 been received into evidence?

11 A. Yes, sir.

12 BY MR. HILL: Your Honor, I ask that these be
13 allowed to be published to the jury.

14 BY THE COURT: They have been admitted, haven't
15 they?

16 BY MR. HILL: Yes, sir, Your Honor.

17 BY THE COURT: Okay.

18 (Exhibits S-34 and S-35 were passed to the jury.)

19 BY MR. HILL:

20 Q. Okay, Ms. Ballard, we were talking about you
21 locating some exhibits for the investigators, and you turned
22 those exhibits over to them; is that right?

23 A. Yes, sir.

24 Q. The next exhibit I would like to show you, Ms.
25 Ballard, is State's Exhibit number 42 for identification.
26 Would you just look at that and see if you recognize it?

27 A. Yes, sir.

28 Q. All right, let me have it back, please.

29 (Checkup sheet shown to Mr. Carter.)

Roxanne Ballard - DIRECT

1 Q. Ms. Ballard, I would like to ask you a few
2 questions about State's Exhibit 42. First of all, can you
3 tell us what that is?

4 A. It's the daily check-up sheet for the business on
5 7/15/96.

6 Q. Is that the original paperwork from the desk of the
7 store?

8 A. Yes, sir. It's -- yes, sir.

9 Q. And is it in substantially the same condition now
10 as when you first located that after the murders?

11 A. Yes, sir.

12 Q. Okay. Your Honor, I would ask at this time that --
13 well, first of all, before I offer that, tell us what the
14 daily check-up sheet, what is the purpose of that piece of
15 evidence, that piece of financial record?

16 A. It has several purposes. The first one is to make
17 out the deposit. The second one would be to reconcile the
18 cash drawer. The third one would be any credit memos that
19 might have been issued, but there is not any on that day.
20 And then on the back it would record the new sales for the
21 day, the cash and the charge sales.

22 Q. Were any new sales recorded that day?

23 A. No, sir.

24 Q. Okay, so the back is a blank form; is that right?

25 A. Yes, sir.

26 BY MR. HILL: Your Honor, at this time I would
27 offer State's Exhibit 42 for identification and ask
28 that it be received.

29 BY MR. CARTER: No objection.

Roxanne Ballard - DIRECT

1 **BY THE COURT:** Let it be admitted.

2 (YELLOW DAILY CHECKUP SHEET PREVIOUSLY MARKED AS
3 STATE'S EXHIBIT S-42 FOR IDENTIFICATION WAS NOW RECEIVED IN
4 EVIDENCE.)

5 BY MR. HILL:

6 Q. Ms. Ballard, I now want to show you State's Exhibit
7 42A for identification. Do you know what this is?

8 A. Yes, sir. It's a blow-up of that daily check-up
9 sheet. (NOTE: Witness is crying again.)

10 Q. Does it have exactly the same information on it
11 except it's just enlarged?

12 A. Yes, sir.

13 (Exhibit shown to Defense Counsel.)

14 **BY MR. HILL:** Your Honor, we offer State's
15 Exhibit 42A without objection.

16 **BY THE COURT:** No objection?

17 **BY MR. CARTER:** No objection.

18 **BY THE COURT:** Let it be admitted.

19 (BLOWUP OF STATE'S EXHIBIT S-42, THE DAILY CHECKUP
20 SHEET, PREVIOUSLY MARKED AS STATE'S EXHIBIT S-42A FOR
21 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

22 BY MR. HILL:

23 Q. Ms. Ballard, I'm going to ask you if you will,
24 please, can you step down here to this, and tell us a little
25 bit about these numbers on here. If you need a moment now,
26 we can ask the Judge to give you a minute. Can you proceed?

27 (The witness was given a kleenex and she stepped
28 down in front of the jury box.)

29 Q. Ms. Ballard, I'm going to ask, if you will, to

Roxanne Ballard - DIRECT

1 stand over on this side, please. And I'm going to give you
2 this pointer, and I'm going to ask you some questions about
3 the chart, okay? First of all, does it show the store
4 location?

5 A. Yes, sir. Winona.

6 Q. All right. Now do you recognize the handwriting on
7 the chart?

8 A. Yes, sir. It's Carmen's. It also has her
9 signature up there.

10 Q. Is there a date on this document?

11 A. Yes, sir.

12 Q. Would you point out the date, please?

13 A. July 15, 1996.

14 Q. Ms. Ballard, can you tell us if that date, whether
15 or not that date reflects the date that this document was
16 prepared?

17 A. No, sir. It does not.

18 Q. It does not reflect the date?

19 A. No, sir.

20 Q. Can you explain why it does not?

21 A. Because you didn't do a check-up sheet until that
22 day's business was concluded. You did it the next morning
23 when you got to work and opened up the store and got ready to
24 do the deposit.

25 Q. So what date would this document have been
26 completed?

27 A. On July the 16th, 1996.

28 Q. And what was the routine practice and custom for
29 preparing this as to when it was done?

Roxanne Ballard - DIRECT

1 A. The morning after the dates that are on here.

2 Q. Would it be done before or after the daily deposit
3 was made from the previous day's sales?

4 A. It would have been done that morning before you
5 went to the bank to make the deposit because you had to fill
6 out this and then fill out the deposit slip.

7 Q. Is there an entry on here, Ms. Ballard, about when
8 the deposit or what the deposit for that previous day's
9 business amounted to?

10 A. Yes, sir. The total.

11 Q. Would you point that out, please, and say what it
12 is?

13 A. \$1,238.86.

14 Q. Okay. And did you happen to look at in State's
15 Exhibit, I believe it was 36, the deposit book? Did you
16 happen to look and see what the deposit total was in the
17 deposit book, whether or not it matched the deposit that you
18 have that is recorded here?

19 A. Yes, sir.

20 Q. Does it match, in fact?

21 A. Yes, sir.

22 Q. Okay. Now does this document reflect anything
23 about how much money was in the store on the morning of the
24 robbery and murder?

25 A. Yes, sir.

26 Q. Would you point that out, please, and explain it to
27 us.

28 A. This is what is in the drawer. It says, "list of
29 cash."

Roxanne Ballard - DIRECT

1 Q. So under "list of cash," these figures represent
2 something about how much money was on hand that day?

3 A. Yes, sir.

4 Q. All right, would you point to that and tell us what
5 these numbers indicate, please?

6 A. Okay. This minus 100 right now, right here is the
7 late charges that were in the drawer. We had a little bitty
8 cardboard box that we kept late charges in, and then when it
9 got to be a substantial amount of money, which to us would
10 have been about a hundred dollars, they would put it in the
11 drawer and put a sheet of paper in there that said "late
12 charges" and how much that was.

13 Q. Now let me stop you right there. Did you at any
14 time examine the cash drawer and see a note indicating how
15 much the late charges were?

16 A. Yes, sir.

17 Q. Okay. Continue, please.

18 A. So that is extra money. That is something that
19 wouldn't normally be in the drawer, but it was in there, and
20 it was documented with that piece of paper that said "late
21 charges" and the amount. This \$260.00 is the amount that was
22 in the first slot. That would be 10's and 20's, the larger
23 bills. This next amount right here, \$95.00 would be the 5's,
24 and this would be the 1's. These would be the quarters,
25 nickels, dimes and pennies.

26 Q. So if I understand you correctly, you are saying
27 the larger bills meaning 10's or 20's or some larger
28 denomination came to a total of \$260.00?

29 A. Yes, sir.

Roxanne Ballard - DIRECT

1 Q. \$95.00 being five dollar bills?

2 A. Yes, sir.

3 Q. \$34.00 in one dollar bills?

4 A. Yes, sir.

5 Q. \$3.75 in, what would that be?

6 A. Quarters.

7 Q. And the five dollars in?

8 A. Dimes.

9 Q. And \$1.90 in?

10 A. Nickels and pennies.

11 Q. Okay. Now what do the numbers starting with the
12 260, starting with this and coming to there; what amount of
13 money does that equal to?

14 A. The total of the cash in the drawer is the sum of
15 these things right here, which is \$400.00.

16 Q. Okay, now there is the number 300 written here.
17 Would you explain why 300 is in these two locations at the
18 bottom where it says total and under this total, beside total
19 paid out right there? Why is that?

20 A. \$300.00 is the normal balance of the drawer, and
21 bookkeeping or accounting or any time you have a petty cash
22 drawer, if you keep proper records, you would have a normal
23 balance. But normal balance is just a fancy word for what it
24 ought to be. What it always was was \$300.00.

25 Q. Now if I may stop you there. How much money was
26 normally kept in the cash drawer for daily operating purposes
27 starting out in the morning? How much was that money?

28 A. \$300.00. But that is not what is in there on this
29 date.

Roxanne Ballard - DIRECT

1 Q. All right, and why--

2 A. It's \$400.00.

3 Q. There was an extra hundred?

4 A. Yes, sir.

5 Q. And this extra hundred, Ms. Ballard, that is
6 indicated with the minus sign here, was this amount of money,
7 this extra hundred incorporated into this 260 here?

8 A. Yes, sir.

9 Q. So from looking at this chart, can you tell how
10 much money was in the cash drawer on the morning of July
11 16th?

12 A. Exactly \$400.00.

13 Q. And you have got that down to pennies; is that
14 right?

15 A. Yes, sir.

16 Q. Okay. Thank you, ma'am. I'm going to let you take
17 the stand and resume your seat.

18 A. (Witness resumes witness stand.)

19 Q. Now Ms. Ballard, when you went to the store, did
20 you have an occasion to look at the cash drawer, the money
21 drawer?

22 A. Yes, sir.

23 Q. Can you tell us a little bit about the routine
24 practice, the store's regular and routine practice for
25 securing funds overnight? In other words, when you closed up
26 at the end of the day, what did you do with the money in the
27 store?

28 A. The little metal drawer that was inside the wooden
29 drawer up front -- it's like a tray -- and it would be taken

Roxanne Ballard - DIRECT

1 out along with the deposit bag which included the deposit
2 book and the accounts receivable ledger, big book, and the
3 receipt book. They were all put in the safe in the back in
4 Mama's office, and then the safe was locked at night.

5 Q. So the money was just taken -- the whole drawer was
6 put in the safe; the safe was locked up at the end of the
7 business day?

8 A. Yes, sir.

9 Q. And the next morning what did you tell us earlier,
10 if you did; what did you say about the routine practice of
11 opening with regard specifically to the cash drawer? What
12 happened with it in the morning when the store was opened?

13 A. When the safe was opened, then that metal drawer
14 and the accounts receivable ledger and the deposit bag with
15 the deposit book and the receipt book were all put back on
16 the front counter; the drawer put inside the wooden drawer;
17 and then the other things put right there except for the
18 deposit bag and the deposit book, and they were put inside
19 the drawer, kind of shoved back up under behind the metal
20 tray until you got ready to make a deposit.

21 Q. Roxanne, I'm going to show you State's Exhibit 29A.
22 This has been received into evidence. Do you recognize what
23 this is?

24 A. Yes, sir. It's that wooden drawer that I was
25 talking about with the metal tray inside.

26 Q. Is this what we call the metal tray that is in the
27 wooden drawer?

28 A. Yes, sir.

29 Q. This functions as the cash register for Tardy

Roxanne Ballard - DIRECT

Furniture?

A. Yes, sir.

Q. What do you notice about the money tray in the wooden drawer that morning?

A. There is no currency in there.

Q. Specifically, can you tell us which, how many currency slots are available?

A. There is three. Right across the top.

Q. Now one of the three across the top is this white. Can you tell us what this white paper is there?

A. That is a piece out of a Serta note pad, scratch pad, whatever you want to call it. That's what I'm talking about when I say the -- you can't see it in this picture, I don't think. But it--

Q. -- Is this the Serta logo there?

A. Yes, sir. And it had late charges \$100 in Carmen's handwriting.

Q. On this particular piece of paper?

A. Yes, sir.

Q. So what does this show about the currency that should have been in the store when the investigators got there?

A. It is missing. It's gone. The currency is gone.

Q. Ms. Ballard, did you subsequently when this crime scene was released, were you the one that took over the premises?

A. Yes, sir.

Q. Did you ever find the missing money?

A. No, sir.

Roxanne Ballard - DIRECT

1 Q. Now Ms. Ballard, this drawer when you close it,
2 what does it close up into?

3 A. The counter. I mean it's a wide counter.

4 Q. I'm going to show you State's Exhibits number 28A,
5 and I'm going to put it on the board. And I'm going to ask
6 you to step down here if you would, please.

7 A. (Witness steps down in front of jury box.)

8 Q. Can you tell us what this is a photograph of,
9 please, ma'am?

10 A. The front office or the counter, whichever one; we
11 called it both things.

12 Q. Is the drawer that houses the money box visible in
13 this photograph?

14 A. Yes, sir. It's right there. (Witness points.)

15 Q. This drawer here above the right hand file
16 cabinets?

17 A. Yes, sir.

18 Q. Does it show the desk of the employees in there?

19 A. Yes, sir. You can see Carmen's desk. That is
20 Carmen's desk over there.

21 Q. Okay, and you mentioned while ago a little box that
22 would keep late payments. Is that visible there?

23 A. It's right there.

24 Q. And what is this object in the middle of the floor
25 area inside the central counter? What is that?

26 A. That is Carmen's purse.

27 Q. And all the time that you were ever there, did you
28 ever notice Carmen to leave her purse in the center of the
29 floor?

Roxanne Ballard - DIRECT

1 A. Of course not.

2 Q. All right, I'm going to let you sit down again if
3 you will, please.

4 A. (Witness resumes witness stand.)

5 Q. Ms. Ballard, I have got one more photograph I need
6 to show you right now if I may, please. I'm going to show
7 you State's Exhibit 38A. Do you recognize what this shows?

8 A. That's my mama's desk in the back.

9 Q. Okay. Take this pointer from me right there. Is
10 there a place in here where you found any of the documents
11 that you provided to the investigators?

12 A. Right over here by her phone was a paycheck to
13 Curtis Flowers and a time card right there by her phone.

14 Q. Okay, what is this object, this big gray object in
15 the center of the photograph?

16 A. The safe.

17 Q. The safe?

18 A. Where the--

19 Q. --And can you tell us about the routine practice
20 for Tardy Furniture store with regard to keeping the safe
21 locked or unlocked and at what times?

22 A. It was locked every night when you got ready to
23 close up the store, and then in the morning it was unlocked
24 and those items removed. And then it was left just kind of
25 pushed to but not locked in the daytime.

26 Q. So the normal practice in the daytime after the
27 safe had been opened in the morning was to leave it unlocked
28 during the day?

29 A. Yes, sir.

Roxanne Ballard - DIRECT

1 Q. But just push the door to?

2 A. Yes, sir.

3 Q. Was there anything else missing besides the
4 particular currency from the money drawer? Was there
5 anything else missing from the store?

6 A. There was a bank bag that was kept in the safe. It
7 was not used for daily deposits. It was just kept in the
8 safe.

9 Q. And what was normally kept in the bag?

10 A. I never looked in it, so I don't know for sure.

11 Q. Are we talking about a different bag than this?

12 A. Yes, sir, not that bag.

13 Q. A different -- what color was the other bag that
14 was missing?

15 A. Green.

16 Q. Did you ever come across that bag, or was that bag
17 ever recovered? Did you ever find it?

18 A. No, sir.

19 Q. Okay, Ms. Ballard, you mentioned that you recovered
20 some other documents.

21 (Mr. Hill hands document to Mr. Carter.)

22 Q. Ms. Ballard, I want to show you what has been
23 marked as State's Exhibit 52 for identification and just ask
24 you to examine that, please, see if you recognize it?

25 A. It's a ticket or invoice or bill or whatever you
26 want to call it, from Coast to Coast for batteries.

27 Q. Did you locate that document yourself? Or do you
28 recall?

29 A. I am not positive. I'm not positive if -- I think

Roxanne Ballard - DIRECT

1 I gave it to the investigators, but I'm not positive.

2 Q. What is it a ticket for?

3 A. Batteries, golf cart batteries.

4 Q. Do you know of any batteries other than the ones
5 that were relevant to this case here that were ever ordered
6 around that time period?

7 A. No, sir.

8 Q. Okay, and how much is it for?

9 A. \$406.17.

10 Q. Would you look at the date on it, please?

11 A. July the 8th.

12 Q. Okay, and do you know whether that is the same
13 receipt or the same ticket for the batteries that were
14 ordered that were broken?

15 A. This is the original. I mean that's the receipt
16 for the batteries, uh-hum, the original batteries.

17 BY MR. HILL: We would offer that, Your Honor,
18 State's Exhibit 52. We would ask that it be received.

19 BY MR. CARTER: Your Honor, it shows the date of
20 July the 8th. Clearly these batteries were obtained
21 and dropped on July 3rd.

22 BY MR. HILL: We don't dispute that, Your Honor,
23 that they were dropped on the 3rd. But the witness
24 has testified this is a billing receipt for those
25 batteries.

26 BY THE COURT: She has identified it as such. It
27 is admitted.

28 BY MR. DE GRUY: Be sure our objection is noted
29 for the record.

Roxanne Ballard - DIRECT

1 (RECEIPT FOR BATTERIES FROM COAST TO COAST
2 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-52 FOR IDENTIFICATION
3 WAS NOW RECEIVED IN EVIDENCE.)

4 BY MR. HILL:

5 Q. Ms. Ballard, before I get too far removed from
6 talking about the money, you have testified that \$400 was in
7 this drawer and that it was missing and never found?

8 A. Correct.

9 Q. Can you tell us who the money that was missing from
10 the store, who did that belong to? Who owned that money?

11 A. My mother, Bertha Tardy.

12 Q. It was her property?

13 A. Yes.

14 Q. You found some other items, I believe, as well. I
15 want to show you State's Exhibit number 43. Can you tell us
16 what that is, please?

17 A. It's a card with Curtis Flowers' name on it. It's
18 his time card.

19 Q. Is that this -- I have here 43A. Is that the same
20 except enlarged?

21 A. Yes, it is.

22 BY MR. HILL: Court indulge me one minute.

23 Q. Roxanne, I'm going to ask you one more time,
24 please. If you would, I'm going to get you to point out some
25 things on this chart, this card up here. Could you step
26 down, please.

27 A. (Witness steps down in front of jury box.)

28 Q. I hand you the pointer back. Does this, is this
29 card marked as to who it belongs to?

Roxanne Ballard - DIRECT

1 A. Curtis Flowers.

2 Q. And what does it show on here? What is the general
3 purpose of this?

4 A. Just to keep up with his hours when he -- we don't
5 have a time clock. We use written records.

6 Q. Does it show when he first became employed or when
7 this first pay period was?

8 A. Yes. It started with June the 29th, and there is
9 the hours for that day.

10 Q. And does it show that he was given some money in
11 advance or given some money; I will put it that way?

12 A. Yes. It says that he was paid \$30.00 cash on
13 June 29th.

14 Q. Is there a compilation of his time to show how much
15 time he was credited for?

16 A. Yes, sir. It's right here, and then the total is
17 17 and 11/12 hours.

18 Q. That is the 17 hours and 55 minutes; is that
19 correct?

20 A. Yes.

21 Q. Okay. If you will just remain right there, but let
22 me -- I want to show you State's Exhibit number 44A. Can you
23 tell us what that is, please?

24 A. It's a paycheck made out to Curtis Flowers by my
25 mother.

26 Q. Okay, where did you find this check?

27 A. Right by the phone in the back office on her desk.

28 Q. And is there any correlation on the check with the
29 time card? Is there any way to correlate the two that is

Roxanne Ballard - DIRECT - CROSS

1 obvious from the face of the document?

2 A. With the hours, would be 17 and a half hours -- I
3 mean 11/12 hours, I'm sorry.

4 Q. Seventeen and 11/12. Does it show how much?

5 A. The gross pay is \$89.42, and the check is for
6 \$82.58.

7 Q. This check was found on the desk in the store?

8 A. Yes, sir.

9 Q. Okay, thank you. I'm going to let you resume your
10 seat if you will, please.

11 A. (Witness resumes witness stand.)

12 BY MR. HILL: Court indulge me one minute.

13 (State's Counsel confer.)

14 BY MR. HILL: Your Honor, we tender the witness
15 for cross-examination at this time.

16 BY MR. CARTER: One moment, Your Honor.

17 (Defense Counsel confer.)

18 CROSS-EXAMINATION BY MR. CARTER:

19 Q. Good morning, Ms. Ballard.

20 A. Good morning.

21 Q. Now this check that you speak of that was right
22 there on the desk by the phone in open view; is that correct?

23 A. Correct.

24 Q. And we all know that Mr. Flowers had worked at
25 there at some point; is that correct?

26 A. Yes.

27 Q. So isn't it true that this check is really no
28 evidence or indication that Mr. Flowers did anything in this
29 store on July the 16th, 1996?

Roxanne Ballard - CROSS

1 **BY MR. HILL:** We object to that as calling for a
2 conclusion. All this witness can testify to is where
3 she found the check.

4 **BY THE COURT:** Well, I think she can answer that
5 question.

6 BY THE WITNESS:

7 A. I'm not sure I -- could you say the question again.

8 Q. Okay, the fact that Mr. Flowers had a check there
9 in open view, considering he had worked there in the past,
10 what evidence does this check present, if any, that Mr.
11 Flowers came into Tardy's on July the 16th, 1996?

12 **BY MR. HILL:** Again, we object. That calls for a
13 legal conclusion--

14 **BY THE WITNESS:** --I mean--

15 **BY THE COURT:** That does call for a legal
16 conclusion.

17 **BY MR. CARTER:** Okay, let me change it.

18 BY THE WITNESS:

19 A. What evidence does it present he didn't come?

20 Q. Could you tell me the extent of what that check
21 proves? All it proves is that Curtis worked there at some
22 point; is that correct?

23 A. I would say it proves that Curtis Flowers worked
24 there, yes.

25 Q. And that's your mom's handwriting; is that correct?

26 A. Yes.

27 Q. And it proves she wrote a check out for \$82.58?

28 A. Yes.

29 Q. To Mr. Flowers; is that correct?

Roxanne Ballard - CROSS

1 A. (Witness nods her head.)

2 Q. Does it prove anything else?

3 BY MR. HILL: Objection. Objection.

4 BY THE COURT: Sustained.

5 BY MR. CARTER: One moment.

6 (Defense Counsel confer.)

7 BY MR. CARTER: No further questions.

8 BY MR. HILL: No redirect, Your Honor.

9 BY THE COURT: Thank you, ma'am. You may step
10 down.

11 BY THE WITNESS: Am I excused or?

12 BY THE COURT: Oh, I'm sorry. Is she finally
13 excused?

14 BY MR. EVANS: Yes, sir.

15 BY THE COURT: Yes, ma'am.

16 WITNESS EXCUSED.

17 BY THE COURT: Okay.

18 BY MR. EVANS: All right, Your Honor, you said
19 you wanted to take up something.

20 BY THE COURT: Okay. Ladies and gentlemen, there
21 is a matter I have to take up outside your presence.
22 I need for you to go to the jury room.

23 JURY LEAVES THE COURTROOM.

24 BY THE COURT: I need to see y'all up here.

25 (CONFERENCE AT THE BENCH WITH ALL COUNSEL AND THE
26 DEFENDANT PRESENT:)

27 BY THE COURT: You are getting ready to call
28 Odell Hallmon?

29 BY MR. EVANS: Yes, sir.

Conference - JURY OUT

1 **BY THE COURT:** I think the law is clear as to
2 what the Supreme Court expects in relation to his type
3 testimony which will be not only informant testimony,
4 but jail house snitch testimony. Is that correct? I
5 did characterize it correctly, didn't I?

6 **BY MR. EVANS:** Yes, sir.

7 **BY THE COURT:** I am relying on Shearer v. State
8 and Moore v. State. I think one, that there are two
9 things that have to be established: One, what his
10 criminal record is; and two, what deal, if any, was
11 made to him. The other thing is I have a cautionary
12 instruction that I must give I think in this
13 particular case. I need to give it after he testifies
14 and then again in writing at the end of the trial.

15 **BY MR. EVANS:** Yes, sir.

16 **BY THE COURT:** And the cautionary instruction is
17 this one. I am sure y'all are familiar.

18 (Document shown to Defense Counsel.)

19 **BY THE COURT:** That is contained in Moore v.
20 State.

21 **BY MR. EVANS:** Yes, sir. And Your Honor, I need
22 a minute to go readvise him since this is a different
23 day of the things that he cannot testify to.

24 **BY MR. HILL:** I think we ought to also bring up
25 for the record, Defense Counsel mentioned yesterday
26 that they had not been furnished this in discovery.

27 **BY THE COURT:** Furnished what?

28 **BY MR. HILL:** I have here the documentary proof
29 that we have, in fact--

Conference - JURY OUT

1 BY THE COURT: What? Furnished what?

2 BY MR. HILL: Discovery.

3 BY MR. DE GRUY: This--

4 BY MR. EVANS: -- The argument yesterday was--

5 BY MR. DE GRUY: --Yeah, there was a second
6 point. What Mr. Evans said yesterday that Odell
7 Hallmon would testify to was that Curtis Flowers told
8 him--

9 BY THE COURT: -- Wait just a minute. (To the
10 audience) Y'all be quiet now.

11 BY MR. DE GRUY: That Curtis Flowers told him, "I
12 will kill you like I killed those other four people"
13 or something like that. That has not been provided
14 us. We have been given two videotaped statements. He
15 specifically says on the statements that Mr. Flowers
16 never told me he did it. They have asked, they asked
17 him over and over on these two video statements that,
18 and we would move that they be admitted, and we have
19 copies, that they be admitted for identification for
20 the appellate record because in both, neither one of
21 these videotaped interviews does he say Mr. Flowers
22 threatened him or that Mr. Flowers told him he killed
23 anyone. In fact, he specifically asked if Mr. Flowers
24 told him he did it, and he said no. He just thinks he
25 did it based on his actions and that he also says that
26 he asked him over and over and over, and Mr. Flowers
27 never told him he did it.

28 So to the specific statement that Mr. Evans said
29 he would testify to, the threat to him, in that he

Conference - JURY OUT

1 needs to introduce it in the context of, this
2 confession to this offense, we have not been provided
3 that statement at all. And in fact, we have been
4 provided the opposite of that where he says repeatedly
5 that he never told me he killed these four people.

6 **BY MR. EVANS:** Your Honor, after I talked myself
7 to this witness, I furnished in discovery -- this was
8 furnished by Clyde but at my request. The State's
9 attorney advised the Defense attorney that Odell
10 Hallmon may be called to testify that he lied at the
11 second trial where he testified for the Defendant.
12 Curtis Flowers had admitted that he killed the people
13 in Tardy Furniture Company and asked Odell to lie for
14 him. That's what he told me he could testify to.
15 That's what was furnished.

16 Also, and I don't even plan on going into it
17 unless they want to go into the tape. He also in the
18 tape said that Curtis Flowers asked him and offered
19 him \$15,000 to kill Doyle Simpson because Doyle's
20 testimony was hurting him in the case. Now if they
21 want to go into these tapes, I will be glad to go into
22 them.

23 **BY THE COURT:** Well, I don't know but what I
24 would have to exclude that part of it anyhow.

25 **BY MR. DE GRUY:** We are offering the tape to show
26 for the appellate record and for this Court to review
27 upon deciding whether or not this is admissible.
28 Nothing even in this document is there a reference to
29 a threat to kill Mr. Hallmon.

Conference - JURY OUT

1 **BY THE COURT:** Let me see that.

2 (Discovery was handed to the Court.)

3 **BY MR. DE GRUY:** Nothing in either of these tapes
4 that were provided show that, and on the tapes
5 specifically he says, he never told me that he did it.

6 **BY MR. EVANS:** Your Honor, I think one thing that
7 is very important and very different than any of the
8 cases that I have read in this is the Court has got to
9 realize this is not a state witness to start with.
10 This is a defense witness. It's a witness that they
11 have put on in previous trials.

12 **BY THE COURT:** Well, he is a state witness today.
13 He may be hostile, but if you have called him, he is
14 your witness.

15 **BY MR. EVANS:** And also, and just for the record,
16 I don't think the Court needs this for its ruling, but
17 just so it's clear in the record, one reason also it's
18 necessary to bring him up is Mr. Ray Charles Carter
19 specifically asked Patricia Hallmon the other day if
20 her and her brother had made up a lie about this case.

21 **BY MR. DE GRUY:** -- She denied it--

22 **BY MR. EVANS:** -- That is another reason.

23 **BY MR. DE GRUY:** She denied it, and so it can't
24 be -- unless he is going to come in and say they did.

25 **BY THE COURT:** Correct me if I'm wrong. You have
26 been furnished with the fact that Odell Hallmon may be
27 called to testify that he lied in the second trial.
28 You know about that?

29 **BY MR. DE GRUY:** Yes.

Conference - JURY OUT

1 BY THE COURT: That is not a violation; right?

2 BY MR. DE GRUY: It is not a discovery violation.

3 BY THE COURT: Okay, all right. And that Curtis
4 had admitted to him that he killed the people at Tardy
5 Furniture. That has been furnished to you, hasn't it?

6 BY MR. DE GRUY: Yes.

7 BY THE COURT: Okay. And asked Odell to lie for
8 him. That has been furnished to you?

9 BY MR. DE GRUY: Yes.

10 BY THE COURT: Okay. There is nothing here
11 though about threats, and that was not furnished to
12 them.

13 BY MR. EVANS: I know it would have to be in
14 writing. I know that it was furnished. It may have
15 not been in writing.

16 BY THE COURT: Well, I can't, if it's not in
17 writing, there is no way for me to rule on the thing.

18 BY MR. EVANS: Yes, sir.

19 BY THE COURT: So as to the threats, I am going
20 to -- I will -- I assume that is a motion in limine on
21 that?

22 BY MR. DE GRUY: Yes.

23 BY THE COURT: I would sustain a motion in limine
24 as to any threats. As to these specific items which
25 Mr. de Gruy has acknowledged were furnished in
26 discovery, he is entitled to testify to that, but I
27 think also, I think he needs to then advise
28 Mr. Hallmon about the limitations the Court has put on
29 his testimony.

Conference - JURY OUT

1 **BY MR. EVANS:** Your Honor, also for the record, I
2 understand the Court's ruling, and I will follow it
3 100 percent. Just for the record, and I think I have
4 got to know what to tell Mr. Hallmon; if they start
5 after I do that, if they start attacking him on why he
6 is saying that, I think at that point he is going to
7 have to be able to say that he has threatened to kill
8 him.

9 **BY THE COURT:** Well, the motion in limine is to
10 the State.

11 **BY MR. EVANS:** Yes, sir.

12 **BY THE COURT:** If the Defense asks questions that
13 open that up, then they just open it up. They have to
14 be as careful as you do about that. But I don't want
15 him -- he needs to be instructed not to volunteer that
16 information.

17 **BY MR. EVANS:** It may even get to the point, Your
18 Honor, and the reason I bring this up; what I'm going
19 to do, I'm going to go back there and tell him what
20 the Court has ruled. I'm also going to tell him with
21 the Court's approval that if they ask a question that
22 I think opens that up, I'm going to ask the Court to
23 stop so that we can review it, and we will cover it at
24 that point.

25 **BY THE COURT:** I think that procedure would be
26 good, outside the presence of the jury.

27 **BY MR. DE GRUY:** I think that rather than
28 instructing the witness on that, it may be better to
29 just raise that at the time if he thinks there is a

Conference - JURY OUT

1 question.

2 BY MR. EVANS: Well, he has got to know what he
3 can and can't say.

4 BY THE COURT: Well, I think he is--

5 BY MR. DE GRUY: -- He can't make the legal
6 determination of whether or not the door has been
7 opened, and I think if you tell him if they ask a
8 question that elicits this answer, go ahead and give
9 it; then he is not being instructed not to--

10 BY THE COURT: -- No, no, no. I don't want him
11 to -- I have sustained the motion in limine on behalf
12 of the Defense that limits the State to what this man
13 can testify to. In doing that, I think it is
14 incumbent upon the State to tell the witness that he
15 cannot testify about these threats that were not
16 supplied in discovery. I think he has got to do that.
17 I think also he needs to instruct the witness
18 specifically to make no mention of any other trial or
19 any other, any other trial. Those things I think you
20 have got to do. Now when it gets to your side, he
21 doesn't have to instruct him-- that is all he has to
22 instruct him to. I assume from what Mr. Evans was
23 just saying is if he sees that that may open it up, he
24 is going to object for me to let the jury go out and
25 let's have a hearing outside the presence of the jury
26 before that gets blurted out. That's about the only
27 way I know to protect y'all.

28 BY MR. DE GRUY: My understanding of what Mr.
29 Evans was asking for was permission from the Court to

Conference - JURY OUT

1 tell Mr. Hallmon that, and I don't think that is
2 proper.

3 BY THE COURT: To tell--

4 BY MR. DE GRUY: To tell Mr. Hallmon that if the
5 Defense asks you a particular question that elicits
6 that answer, then--

7 BY THE COURT: I don't think you have got a dog
8 in that hunt. That is their dog.

9 BY MR. EVANS: Yes, sir.

10 BY MR. DE GRUY: And I think it's--

11 BY THE COURT: -- If y'all open it up, you open
12 it up.

13 BY MR. DE GRUY: I think that is a matter that we
14 should take a break in the proceedings and determine--

15 BY THE COURT: Sure. I agree.

16 BY MR. DE GRUY: That the fact that the door may
17 become open at some later point should not be relayed
18 to this witness at this time.

19 BY THE COURT: Well, I think everybody --

20 BY MR. EVANS: -- That is not my--

21 BY THE COURT: -- I think each side has its own
22 problems. I'm going to let each one of you deal with
23 the other one. Y'all don't need to worry about the
24 other side so much as it is. I mean I just-- you are
25 instructed to do what I just told you to do.

26 BY MR. EVANS: Your Honor, for the record, for
27 several reasons; one, because I want to make sure that
28 this witness follows the Court's instructions and also
29 because this would be a hostile witness. He was a

Conference - JURY OUT

1 defense witness in the first case, but specifically,
2 more importantly for the purpose of making sure that
3 he doesn't blurt out something else, I do intend with
4 the Court's approval to ask leading questions on this
5 so that we can elicit just what the Court has asked me
6 to go into.

7 **BY THE COURT:** I will declare him a hostile
8 witness in the sense that he did testify apparently in
9 opposition to what he is going to testify to today at
10 another trial. I think that would make him a hostile
11 witness.

12 **BY MR. CARTER:** I am just wondering how would he
13 be hostile today if he is going to explain what it is
14 that he is coming in here to testify? Why would he be
15 hostile?

16 **BY MR. EVANS:** May I have about five minutes?

17 **BY THE COURT:** To be honest with you, I think the
18 leading questions thing will save y'all both getting
19 into trouble.

20 **BY MR. DE GRUY:** I have one more, just to make
21 sure our record is clear on this; that I understand
22 the ruling on following the discovery issue on, based
23 on these tapes and this witness never having said in
24 any -- this is apparently another interview with
25 Mr. Evans that was not tape recorded in which he told
26 a different story; that based on what was provided to
27 us on the tapes, that this witness has no relevant
28 evidence in this case. This is all he is going to
29 testify to is other crimes evidence, the suborning of

Conference - JURY OUT

1 perjury, and for that we would ask that he not be
2 allowed to testify at all.

3 **BY THE COURT:** Of course, the law is unless he
4 has been convicted of perjury, he is not disqualified
5 from testifying. That is case law. So he is not
6 disqualified on that basis, and then that just gets it
7 down to if I give the precautionary instructions and
8 you do the evidence about his prior history and stuff,
9 it is just a question of fact for the jury--

10 **BY MR. DE GRUY:** -- The issue is he is accusing
11 Mr. Flowers of suborning perjury, and Mr. Flowers is
12 not indicted for suborning perjury or conspiracy. He
13 is only indicted for capital murder.

14 **BY THE COURT:** Okay, but how would -- how is he
15 doing that?

16 **BY MR. DE GRUY:** Well, he is going, that's what
17 his testimony is going to be, that Mr. Flowers got him
18 to commit perjury in the prior hearing. And so that
19 is an allegation against Mr. Flowers that he suborned
20 perjury. That's what the State is offering this for
21 and--

22 **BY MR. EVANS:** --No, the State is offering this
23 for the fact that he is asking a witness to lie for
24 him and cover up some of the facts of the case. It's
25 not a separate offense. It's an offense that is
26 connected with this particular crime.

27 **BY THE COURT:** It would be evidence of another,
28 it would be evidence of another bad act under 404. It
29 also would be admissible under 404(b) "for other

Conference - JURY OUT

1 purposes, motive, opportunity, intent, plan,
2 knowledge." It would be admissible under that, and I
3 may have to make this ruling again, but if that's what
4 the testimony is, then I find that the probative value
5 outweighs the prejudicial effect. But I'm saying that
6 before I have heard the testimony.

7 BY MR. EVANS: Yes, sir.

8 BY MR. DE GRUY: And our question at that time
9 would be for the Court to specifically rule on which
10 exemption it qualified under and then -- because the
11 jury would have to be instructed on that.

12 BY MR. EVANS: The jury would have to be
13 instructed on which exception?

14 BY THE COURT: I don't know about that.

15 BY MR. EVANS: I don't either.

16 BY THE COURT: I don't think that is true. It's
17 not a limiting instruction, I don't think.

18 BY MR. EVANS: I'm not aware of any.

19 BY MR. DE GRUY: Well, I think I have made the
20 record as clearly as I can.

21 BY THE COURT: Okay, you can -- if you would
22 like, you can supply me with some authority for the
23 statement that you just made.

24 BY MR. DE GRUY: That a limiting instruction will
25 be required? Okay.

26 BY THE COURT: It certainly would if it was a
27 crime, I mean what he is charged with.

28 BY MR. EVANS: Your Honor, the State's view on
29 this is even though this could, I guess, be considered

Conference - JURY OUT

1 as a bad act, it is no more different than if he
2 destroyed the gun or destroyed shoes. That is
3 destroying evidence in a crime, but it is a
4 furtherance of trying to conceal that particular
5 crime. And asking a witness to lie in this particular
6 case is only a furtherance of the same crime by trying
7 to conceal evidence of the crime.

8 BY THE COURT: It would certainly be evidence of
9 a plan.

10 BY MR. EVANS: Yes, sir.

11 BY THE COURT: I may give a limiting instruction
12 anyhow if that testimony comes out consistent with
13 404. And basically, it is going to be the recitation
14 of 404(a) and the, with the exception that they could
15 consider it only for evidence of a plan.

16 BY MR. EVANS: All right. May I have about five
17 minutes to make sure everything, he understands all
18 this?

19 BY THE COURT: Okay.

20 END BENCH CONFERENCE.

21 BY THE COURT: We will take a short break.

22 (FOLLOWING THE MORNING RECESS ON FEBRUARY 10, 2004,
23 THE TRIAL CONTINUED IN OPEN COURT WITH ALL COUNSEL AND THE
24 DEFENDANT PRESENT.)

25 BY THE COURT: I'm ready.

26 JURY ENTERS THE COURTROOM.

27 BY THE COURT: Okay, who will you have next?

28 BY MR. EVANS: Odell Hallmon.
29

Odell Hallmon - DIRECT

1 ODELL HALLMON,
2 a black male called to testify as a witness by the State of
3 Mississippi but with the State allowed to ask leading
4 questions as stated in the bench conference, having first
5 been duly sworn, testified as follows, to-wit:

6 BY THE COURT: Have a seat up there.

7 DIRECT EXAMINATION BY MR. EVANS:

8 Q. State your name for the record, please.

9 A. Odell Hallmon, Jr.

10 Q. Mr. Hallmon, do you know a person named Curtis
11 Flowers?

12 A. Yes, sir.

13 Q. Do you see him in the courtroom here today?

14 A. Sir?

15 Q. Do you see him here in the courtroom today?

16 A. Yes, sir.

17 Q. Would you point to him and identify him, please?

18 A. There he is right.

19 Q. Mr. Hallmon, did the Defendant Curtis Flowers ever
20 ask you to do anything for him in relationship to this case
21 we are in court on?

22 A. Yes, sir.

23 Q. What did he ask you to do?

24 A. He asked me to help him make my sister out of a lie
25 and discredit her testimony.

26 Q. And who is your sister?

27 A. Patricia Hallmon.

28 Q. Based upon the fact that he asked you to help him
29 make your sister out a lie, did you do that for him?

Odell Hallmon - DIRECT

1 A. Yes, sir.

2 Q. Was that true?

3 A. No, sir.

4 Q. Has he ever admitted anything to you about his
5 involvement in this crime?

6 A. Yes, sir.

7 Q. What did he tell you?

8 A. He told me that he killed some peoples at Tardy
9 Furniture Company.

10 BY MR. EVANS: Your Honor, I tender the witness.

11 BY MR. CARTER: One moment.

12 BY THE COURT: I need to see y'all up here.

13 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
14 JURY AS FOLLOWS:)

15 BY THE COURT: I think the case law is that the
16 jury has got to be informed about his criminal
17 background and about any deal.

18 BY MR. EVANS: Okay, I will cover that.

19 BY THE COURT: I think--

20 BY MR. EVANS: -- Yes, sir.

21 BY THE COURT: I think Shearer v. State alludes
22 to that; if not exactly says it, but I'm confident
23 that that needs to be in the record.

24 BY MR. EVANS: Yes, sir.

25 END BENCH CONFERENCE.

26 FURTHER DIRECT EXAMINATION BY MR. EVANS:

27 Q. Mr. Hallmon, just a couple of other questions. Can
28 you tell the ladies and gentlemen of the jury what all you
29 have been convicted of?

Odell Hallmon - DIRECT - CROSS

1 A. Me? I have been convicted of a convicted felon
2 with a firearm on a previous charge of aggravated assault.

3 Q. All right, aggravated assault and what else?

4 A. After I did my time on my aggravated assault, I had
5 a firearm.

6 Q. Okay. At the time you came to me and gave me this
7 information, were you under any charges?

8 A. No, sir.

9 Q. Did I or anyone else make you any promise, hold out
10 any hope of reward to get you to make these statements?

11 A. No, sir.

12 Q. Are you expecting anything from the State in
13 response to your making these statements?

14 A. No, sir.

15 BY MR. EVANS: That's it, Your Honor.

16 BY MR. CARTER: One moment, Your Honor.

17 (Defense Counsel confer.)

18 CROSS-EXAMINATION BY MR. CARTER:

19 Q. Good morning, Mr. Hallmon. I am Mr. Ray Carter.

20 A. Good morning.

21 Q. Isn't it a fact that you told John Johnson that
22 Curtis Flowers never directly admitted to you that he killed
23 anybody at Tardy's Furniture store?

24 A. I told John Johnson that, I believe.

25 Q. Okay. Do you know Ms. Lola Flowers?

26 A. No, sir.

27 Q. Do you know, have you -- you know Curtis Flowers;
28 right?

29 A. Yes, sir.

Odell Hallmon - CROSS

1 Q. Didn't you write his mother a letter?

2 A. Oh, yes, sir. I wrote her a letter, but I don't
3 know her. It was personal.

4 BY MR. CARTER: May I approach the witness?

5 BY THE COURT: Yes.

6 BY MR. CARTER:

7 Q. I pass you that. Can you look at that and tell me
8 if you recognize it?

9 A. Yes, sir.

10 BY MR. CARTER: Can I have it marked for
11 identification?

12 (LETTER TO MRS. FLOWERS FROM ODELL HALLMON WAS
13 MARKED AS DEFENDANT'S EXHIBIT D-2 FOR IDENTIFICATION. NOTE:
14 Counsel asked the witness a question while the Court Reporter
15 was marking the exhibit.)

16 BY MR. CARTER:

17 Q. Again so we can get it on the record, what is your
18 nickname?

19 A. Cookie.

20 (Defense Counsel confer.)

21 Q. Now you stated you wrote Ms. Flowers, Ms. Lola
22 Flowers a letter; is that correct?

23 A. Yes, sir.

24 Q. And contained within that letter, I believe you
25 apologized to her; is that correct?

26 A. Yeah, along with Curtis' help, yes, sir.

27 Q. And I believe you told her you was behind
28 everything that your sister did; is that correct?

29 A. Yes, along with Curtis' help, yes, sir.

Odell Hallmon - CROSS

1 Q. Now in that letter did you tell her anything about
2 Curtis helping you?

3 A. No, sir.

4 Q. And in that letter you also said that you had Ann
5 to tell the police she felt like Curtis committed those
6 murders; is that correct? Do you deny that?

7 A. As I can recall, I might have-- I don't -- if I
8 could read the letter. It has been a long time.

9 Q. You want to read it?

10 A. Yes.

11 Q. Read it silently now.

12 A. (Pause while witness reads and then hands it back
13 to Counsel.)

14 Q. Where do you live now, Mr. Hallmon?

15 A. Mississippi Department of Corrections.

16 Q. And in that letter you said, I tried to get that
17 reward by using Ann; is that correct?

18 A. Yes, sir. Along with Curtis' help, yes, sir.

19 Q. But you didn't say anything in the letter about
20 Curtis' help, did you?

21 A. No, sir. It wasn't...

22 Q. And you asked Ms. Flowers to forgive you, didn't
23 you?

24 A. Yes, sir.

25 Q. And you told her every day that you talked to
26 Curtis, you feel guilty, didn't you?

27 A. Yes, sir. Well -- yes, sir.

28 Q. And you said Ann knows for herself what you all
29 were trying to do; is that correct?

Odell Hallmon - CROSS

1 A. Yes, sir.

2 BY MR. CARTER: One moment.

3 (Defense Counsel confer.)

4 BY MR. CARTER:

5 Q. Mr. Hollman?

6 A. Hallmon, sir. Hallmon.

7 Q. Hallmon, I'm sorry. H A L L M A N?

8 A. M O N.

9 Q. H A L L M O N. Mr. Hallmon, now you talked to John
10 Johnson at least twice that I'm aware of when the
11 conversation was being taped; is that correct? Yes or no, or
12 do you remember?

13 A. Yes, sir.

14 Q. Who was present at those?

15 A. Me and Mr. Johnson.

16 Q. Was Warden Miskelly at one of them?

17 A. Well, he was -- he was in and out. He was around,
18 in and out.

19 Q. And at one of them your attorney was there, wasn't
20 he?

21 A. Uh, yes. Let me see. I can't hardly recall. I
22 believe so.

23 Q. What was his name?

24 A. Who I had? Mr. Bailey.

25 Q. Mr. who?

26 A. Mr. Bailey.

27 Q. Bailey?

28 A. Yes, sir.

29 Q. Correct me if I'm wrong, but in both of those

Odell Hallmon - CROSS

1 statements you said Mr. Flowers never directly admitted it,
2 admitted to me that he killed those folks at Tardy's; is that
3 correct?

4 A. To Mr. Johnson, yes, sir. I told Mr. Evans.

5 BY MR. CARTER: One moment. I think I'm
6 finished. One moment.

7 (Defense Counsel confer.)

8 BY MR. CARTER:

9 Q. Did you talk to Mr. Evans before or after you
10 talked to John Johnson?

11 A. Before I talked to Mr. Evans not too long, I had
12 got out.

13 Q. Okay, so I don't know that I'm clear which one you
14 talked to first. Mr. Evans--

15 A. -- Mr. Evans.

16 Q. Oh, he was first?

17 A. Yes, sir.

18 Q. Okay, where did that occur?

19 A. On the telephone at first.

20 Q. Was there any tape, videotape or audio tape made of
21 that?

22 A. No, sir. I don't think so unless they had the
23 phone tapped. I don't know.

24 Q. And the time that you told Mr. Evans that, who was
25 present? Were there any witnesses?

26 A. I was on the phone. I don't know who could have
27 been.

28 Q. Who was with you? Was anybody with you?

29 A. Well, no, sir. But my mama had told me to talk to

Odell Hallmon - CROSS

him.

Q. Were you at home when the phone conversation occurred?

A. Yes, sir. It wasn't too long after I had got out of jail, out of Parchman.

Q. Can you give me some idea what date that was because I have no idea?

A. It had to have been around -- well, I got out in 2000. So it had to have been around about March -- I can't recall -- no, it was about July or August, somewhere up in there.

Q. And after you had this phone conversation, was there another follow-up conversation?

A. Yes, sir.

Q. Where you talked--

A. --Yes, sir. He put me on a polygraph test to see whether I--

BY MR. CARTER: --I object, Your Honor.

BY THE COURT: Wait just a minute, Mr. Hallmon.

BY THE WITNESS: Yes, sir.

BY MR. CARTER:

Q. Listen to me carefully, Mr. Hallmon.

A. That was the follow-up.

Q. Okay, I'm sorry. I apologize. Let me state it better so you can answer it more clearly. If you talked to Mr. -- your conversations with Mr. Evans, was that videotaped?

A. No, sir.

Q. I know you told me that the phone conversation

Odell Hallmon - CROSS - REDIRECT

1 wasn't videotaped.

2 A. I don't know whether it-- no, it wasn't videotaped.
3 I was on the phone.

4 Q. Right.

5 A. It could have been recorded; I don't know.

6 Q. And did you have a conversation with Mr. Evans that
7 was videotaped?

8 A. Uh.

9 Q. Did you see a video camera?

10 A. Not to my knowledge.

11 BY MR. CARTER: Okay. No further questions. One
12 moment. No further questions.

13 REDIRECT EXAMINATION BY MR. EVANS:

14 Q. Mr. Hallmon, I want to ask you just a few things.
15 The time that your mother got you to contact me, that was
16 after you got out of jail; is that correct?

17 A. Yes, sir.

18 Q. At that time you had no charges on you. You had
19 served your time; is that correct?

20 A. Yes, sir.

21 Q. And after talking to your mother, you decided to
22 come and tell me about what Curtis had asked you to do?

23 A. Yeah, I was going to do it anyway, but my mama just
24 went on and let me know to get it on up off of me because it
25 was worrying me.

26 Q. And the letter that was sent to Ms. Flowers, who
27 asked you to send that letter?

28 A. Curtis did.

29 Q. Was that part of the scheme?

Odell Hallmon - REDIRECT

1 A. Yes, sir.

2 Q. Now I want to make sure all this is clear. What
3 you are in jail on now, you were picked back up on a parole
4 violation; is that right?

5 A. Yes, sir. Didn't go see my probation officer in
6 three months.

7 Q. And again, has any promises been made to you in
8 relationship to that or anything else about this case?

9 A. No, sir. I am locked up, Mr. Evans.

10 Q. Is what you're telling this jury today the truth?

11 A. Yes, sir.

12 BY MR. EVANS: Nothing further, Your Honor.

13 BY THE COURT: Mr. Hallmon, you may step down.

14 WITNESS LEAVES THE COURTROOM.

15 BY THE COURT: Ladies and gentlemen, there is a
16 cautionary instruction that I must give you at this
17 time. The Court instructs the jury that the law looks
18 with suspicion and distrust on the testimony of an
19 alleged informant and requires a jury to weigh the
20 same with great care and suspicion. You should weigh
21 the testimony from an alleged informant and passing on
22 what weight, if any, you should give this testimony.
23 You should weigh it with great care and caution and
24 look upon it with distrust and suspicion.

25 I need to see y'all up here and make one more
26 ruling real quick.

27 BY MR. EVANS: Yes, sir.

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
29 JURY AS FOLLOWS, TO-WIT:)

Odell Hallmon - REDIRECT

1 **BY THE COURT:** I do not think Mr. Hallmon's
2 testimony was sufficient to require a limiting
3 instruction under 404, so I decline to do that. I
4 find specifically that to do so would confuse the jury
5 as to who I was talking about, him or Mr. Flowers.

6 **BY MR. EVANS:** Yes, sir.

7 **BY MR. DE GRUY:** One other matter. Mr. Hallmon,
8 we have never been informed that Mr. Hallmon took a
9 polygraph. So it was a complete surprise when he
10 blurted out that he took a polygraph. As everyone
11 knows, even the mention of polygraph is improper, and
12 we have to move for a mistrial at this time.

13 **BY THE COURT:** Well, it was in response to a
14 defense question, and it was nothing as to the results
15 or what happened or anything else. That motion is
16 denied.

17 **BY MR. CARTER:** And also, I might add for the
18 record, Your Honor, I might add for the record that my
19 question was, Did you talk to Mr. Evans at another
20 time. My question did not elicit whether or not--

21 **BY THE COURT:** --Well, he-- excuse me; go ahead.

22 **BY MR. CARTER:** I just wanted to say that my
23 question did not ask him anything about any polygraph.
24 I simply asked him if he had talked to Mr. Evans
25 again.

26 **BY THE COURT:** Well, the point is the State did
27 not elicit that answer, and the answer was only that
28 there was one. It was not as to the results of it,
29 and that is not sufficient to grant a mistrial. So it

Joe Andrews - DIRECT

1 is overruled.

2 END BENCH CONFERENCE.

3 BY THE COURT: Who will you have next?

4 BY MR. EVANS: Joe Andrews.

5 JOE EDWARD ANDREWS,

6 a white male called to testify as a witness by the State of
7 Mississippi, having first been duly sworn, testified as
8 follows, to-wit:

9 BY THE COURT: State your name, please, sir.

10 BY THE WITNESS: Joe Edward Andrews.

11 DIRECT EXAMINATION BY MR. EVANS:

12 Q. Good morning, Mr. Andrews.

13 A. Good morning.

14 Q. How are you employed?

15 A. I am employed as a forensic scientist at the
16 Mississippi Crime Laboratory in Jackson.

17 Q. What are your duties at the crime lab?

18 A. I currently hold the position of regional lab
19 manager. But part of those duties include the analysis of
20 physical evidence in what is commonly called the trace
21 evidence section. Trace evidence at the Mississippi Crime
22 Laboratory includes the analysis of such things as hairs,
23 textile fibers, paints, glass, gunshot residue, and footwear
24 and tire track impressions.

25 Q. And what type of training and experience do you
26 have that allows you to perform these duties?

27 A. I have a bachelor of science degree from the
28 University of Mississippi in forensic science. As part of
29 that degree program, I took a variety of scientific courses

Joe Andrews - DIRECT

1 related to forensic science. And since I have been employed
2 at the Mississippi Crime Laboratory, I have received on the
3 job training at the crime lab in all the different technical
4 aspects of trace evidence examination. During my employment
5 at the crime laboratory, I have also received or attended
6 numerous training seminars put on by the Federal Bureau of
7 Investigation and other forensic organizations related to the
8 analysis and comparison of trace evidence type materials.

9 Q. Can you give us some approximate number of times
10 that you have compared different trace evidence to determine
11 if it was related to a crime or not?

12 A. I have been employed at the Mississippi Crime
13 Laboratory a little over 26 years, and during that time I
14 have probably conducted examinations on thousands of
15 different types of trace evidence cases.

16 Q. And specifically, have you conducted trace evidence
17 on shoe wear impressions and on gunshot residue?

18 A. Yes, sir.

19 Q. Approximately how many times?

20 A. It would be well into the hundreds for each one of
21 those.

22 Q. And do you have any particular area that you
23 specialize in?

24 A. Trace evidence, which includes all of the areas I
25 mentioned earlier.

26 Q. Your Honor, at-- well, let me ask you this also.
27 And can you give us some idea of approximately how many times
28 you have been accepted by the courts in this state as an
29 expert in the field of trace evidence?

Joe Andrews - DIRECT

1 A. Approximately 300.

2 BY MR. EVANS: Your Honor, at this time I would
3 offer Mr. Andrews as an expert in the field of trace
4 evidence.

5 BY MR. CARTER: One moment. No objection.

6 BY THE COURT: The Court accepts him as an expert
7 in that field.

8 BY MR. EVANS:

9 Q. Mr. Andrews, did you have an occasion to be asked
10 to assist in any areas in this particular case?

11 A. Yes, sir. I did.

12 Q. Specifically, one of those areas, was it in
13 relationship to some bloody shoe tracks that were found
14 inside the store?

15 A. Yes, sir. It was.

16 Q. I want to show you Exhibits 47, 48, 49 and 50 and
17 ask if you have had an occasion to see these exhibits before?

18 A. Yes, sir. I have.

19 Q. Do you know who sent them to you?

20 A. They were submitted to the crime laboratory as part
21 of the crime scene investigation material submitted by
22 Melissa Shoene, who was an employee at the crime lab at that
23 time.

24 Q. What were you asked to do in relationship to
25 those?

26 A. The original photographs were submitted to the
27 laboratory, and I was requested to examine them for the
28 presence of any possible footwear impressions.

29 Q. Were you able to make any determination whether or

Joe Andrews - DIRECT

1 not that was, in fact, footwear impressions?

2 A. Yes, sir. The initial examination I conducted, I
3 was able to determine that there was a partial footwear
4 impression depicted in each one of these four photographs.

5 Q. All right, were you asked to do anything further?

6 A. Yes, sir. Initially, there was a pair of shoes
7 submitted as having been collected from the Defendant in this
8 case, Curtis Flowers. And the initial examination was to
9 compare these impressions against that pair of shoes to
10 determine whether or not that pair of shoes could be included
11 or excluded as having made these impressions.

12 Q. And I believe that was the Fila tennis shoes that
13 he had on at one point; is that correct?

14 A. Actually that was a pair of Nike tennis shoes.

15 Q. Nike. Okay, those shoes did not make those
16 impressions, did they?

17 A. The outsole pattern on that pair of Nike tennis
18 shoes was a completely different design, and so therefore
19 that pair of shoes could be definitely excluded as having
20 produced any of these four impressions.

21 Q. When those were sent to you, did you understand
22 that they were taken from the Defendant?

23 A. The information that was submitted on the bag that
24 the shoes were submitted in indicated that they were
25 recovered from Curtis Flowers.

26 Q. What size were those Nike shoes?

27 A. They were 10 1/2's.

28 Q. Were you asked to do any further determinations to
29 try to find out what type of shoe had left this track?

Joe Andrews - DIRECT

1 A. Just based on the outsole design and based on some
2 information that was received in relationship to an empty
3 shoe box that was recovered, the--

4 Q. -- All right, let me stop you right there for just
5 a second. I want to hand you Exhibit 79A, which has been
6 identified as the shoe box that was recovered from the house
7 the Defendant was living in. Have you seen this exhibit?

8 A. Yes, sir. I have.

9 Q. Was it sent to you?

10 A. Yes, sir. It was.

11 Q. For what purpose?

12 A. To examine it. First of all, to get information
13 off of it that could be used to determine whether or not the
14 pair of shoes that was originally contained in this box could
15 be included or excluded as having produced the impressions at
16 the crime scene.

17 Q. And what shoes, what type of shoes were originally
18 contained in that box?

19 A. According to the information on the box, these were
20 M's Grant Hill II MID's produced by Fila.

21 Q. What size?

22 A. Size 10 1/2.

23 Q. Have you had an occasion to contact Fila in
24 relationship to this case?

25 A. Yes, sir. I did.

26 Q. Did you, did Fila send you a set of soles that
27 would have been the same soles that would have been in that
28 shoe box?

29 A. Yes, sir. They did.

Joe Andrews - DIRECT

1 Q. Or not the ones that were in the box but the exact
2 same--

3 A. -- the exact same design, yes, sir.

4 BY MR. EVANS: Your Honor, may I have this item
5 marked for identification?

6 BY THE COURT: Yes.

7 (OUTER BOX MAILED FROM FILA WAS MARKED FOR
8 IDENTIFICATION AS STATE'S EXHIBIT S-119.)

9 BY MR. EVANS:

10 Q. Mr. Andrews, I will hand you Exhibit 119 for
11 identification, and I will ask you if you can identify what
12 this is?

13 A. Yes, sir. I can identify the outside box as a
14 mailing container. It bears the Mississippi Crime Laboratory
15 case number, exhibit number, and my initials on it. And it
16 was delivered to me from your office from Fila, and it
17 contains-- do you want me to open it?

18 Q. Yes, sir. If you would, open it.

19 A. (Witness opens box) Inside the outer cardboard,
20 brown cardboard box is a UPS next day air box that I can also
21 recognize by the Mississippi Crime Laboratory case number,
22 exhibit number, and my initials that I placed on it at the
23 time that I received it. And inside this box is a pair of
24 Fila outsoles. And it's just the sole portion of a pair of
25 Fila shoes.

26 Q. And is this the identical outsoles that would have
27 been on a pair of shoes that were in the box that was found
28 in the house that Curtis Flowers was living in?

29 A. Yes, sir. This pair of outsoles has the exact same

Joe Andrews - DIRECT

1 pattern that would have been on the pair of shoes that were
2 originally packaged in the shoe box.

3 (Documents were shown to Mr. Carter.)

4 **BY MR. EVANS:** Your Honor, I have three more
5 exhibits that I would asked to be marked for
6 identification.

7 **BY THE COURT:** All right.

8 (COVER LETTER OF 12/18/03 FROM FILA WAS MARKED AS
9 STATE'S EXHIBIT S-120 FOR IDENTIFICATION. FILA SLICK CATALOG
10 SHEET WAS MARKED AS STATE'S EXHIBIT S-121 FOR IDENTIFICATION.
11 ENGINEERING DESIGN OF FILA SHOE SOLE WAS MARKED AS STATE'S
12 EXHIBIT S-122 FOR IDENTIFICATION.)

13 BY MR. EVANS:

14 Q. All right, Mr. Andrews, I will hand you Exhibits
15 120, 121, and 122 for identification. Starting with 120, can
16 you tell us what that is?

17 A. Yes, sir. It is submission-- State's Exhibit 120
18 for identification is the letter that was sent by Fila with
19 the outsoles describing the outsoles as a pair of the
20 outsoles from an M Grant Hill II MID, size 10 1/2.

21 Q. And again, is that the exact same information that
22 was on the shoe box recovered from the house that the
23 Defendant was living in?

24 A. Yes, sir. That's correct.

25 Q. All right, Exhibit 121?

26 A. 121 is a copy of the catalog page of a pair of
27 Grant Hill II MID's, serial number 1-B136-150, which depicts
28 the exact, what the shoes that were originally in the shoe
29 box looked like.

Joe Andrews - DIRECT

1 Q. Both the shoe and the sole?

2 A. The shoe and the sole.

3 Q. And again, is that a catalog picture of the exact
4 same type of shoes that would have been in the shoe box
5 recovered from the Defendant's house?

6 A. Yes, sir. That's correct.

7 Q. And the next Exhibit number 122?

8 A. 122 is a copy of the design or the engineering
9 drawing that was made by the designer who designed the
10 outsoles. And this is the original design drawing or a copy
11 of the original design drawing for producing that particular
12 outsole.

13 Q. And again, is it for the particular outsole that
14 would have been on the shoes in the box recovered from Curtis
15 Flowers' house?

16 A. Yes, sir. That's correct.

17 BY MR. EVANS: Your Honor, I offer these four
18 exhibits into evidence.

19 BY MR. CARTER: No objection.

20 BY THE COURT: Let them be admitted. There is
21 no -- I don't see any reason for the box.

22 BY MR. EVANS: Your Honor, what I would like,
23 just to keep it straight; I have no problem with
24 marking the outsoles as 119A and leaving the box just
25 marked for identification because we don't need the
26 box.

27 BY THE COURT: That's right.

28 (COVER LETTER OF 12/18/03 PREVIOUSLY MARKED AS
29 STATE'S EXHIBIT S-120 FOR IDENTIFICATION WAS NOW RECEIVED IN

Joe Andrews - DIRECT

1 EVIDENCE. FILA CATALOG SHEET PREVIOUSLY MARKED AS STATE'S
2 EXHIBIT S-121 FOR IDENTIFICATION WAS NOW RECEIVED IN
3 EVIDENCE. ENGINEERING DESIGN OF FILA SHOE SOLE PREVIOUSLY
4 MARKED AS STATE'S EXHIBIT S-122 FOR IDENTIFICATION WAS NOW
5 RECEIVED IN EVIDENCE. LEFT OUTSOLE OF FILA SHOE WAS RECEIVED
6 IN EVIDENCE AND MARKED AS STATE'S EXHIBIT S-119A.)

7 **BY MR. EVANS:** If I may, Your Honor, just so we
8 can keep it straight, 119A has been marked on the left
9 outsole. Just so that we won't get confused at any
10 point, I will now ask that the right outsole be marked
11 119B.

12 **BY THE COURT:** All right.

13 (RIGHT TENNIS SHOE OUTSOLE WAS RECEIVED IN EVIDENCE
14 AND MARKED AS STATE'S EXHIBIT S-119B.)

15 BY MR. EVANS:

16 Q. All right, I want to hand you back the outsoles
17 119A and 119B, and I will ask you specifically based upon the
18 fact that you received these letting you know what would have
19 been in that box that was recovered, did you, based upon
20 that, perform any additional tests?

21 A. Yes, sir. I did.

22 Q. Would you tell the ladies and gentlemen of the jury
23 what you did?

24 A. I used the outsoles in 119A and 119B to produce a
25 series of test impressions, specifically of the heel area of
26 both of these outsoles and then used those test impressions
27 to compare against the impressions depicted in the
28 photographs from the crime scene.

29 Q. And how do you do that, and why do you do it like

Joe Andrews - DIRECT

you do?

A. Basically, what I used in this particular case was an inkless ink product. It's basically a clear liquid that is blotted on to the bottom of the soles of the shoes and then touched against some chemically treated paper to produce -- and once it touches the paper, it reacts with the paper and produces a visible impression. That particular impression was then photocopied onto a clear photocopy so that it could be directly overlaid over the photographs of the impressions from the crime scene.

It's done that way so that you can first of all, compare what are called the class characteristics between a given set of shoes and a question impressions. Class characteristics are the things that are part of the shoe design. They are the overall size and shape and design characteristics of the outsole itself. If you can match class characteristics, then you can say that the particular impression is consistent with any shoe of that particular size that has that particular outsole design on the sole of the shoes.

Once you have done a comparison for class characteristics, you can look for individual characteristics. Individual characteristics are things that are added to the outsole of the shoe during normal wear and tear. These can be little cuts, abrasions, wear patterns that can be, that will reproduce as the shoe touches a surface. And those things are individual to that particular shoe. If you can find individuals, then you can positively identify a shoe as a source of an impression.

Joe Andrews - DIRECT

1 In this particular case since we knew we weren't
2 dealing with the shoe that produced the images at the crime
3 scene, we were more concerned with just class characteristics
4 of could a shoe of this design and this size have made the
5 impressions at the crime scene.

6 Q. And were you able to make any determinations in
7 this case?

8 A. Yes, sir. I was.

9 Q. What was that determination?

10 A. The impressions that are depicted in the
11 photographs in State's Exhibit 47, 48, 49 and 50 are
12 consistent in class characteristics which are design, shape,
13 and outsole characteristics with the right heel of the
14 outsoles in 119B.

15 **BY MR. EVANS:** Your Honor, may I have the witness
16 step down?

17 **BY THE COURT:** Yes.

18 BY MR. EVANS:

19 Q. If you would, step down and bring one of the
20 photographs that better shows that and the right outsole, if
21 you would.

22 A. (Witness complies and steps in front of jury box.)

23 Q. Mr. Andrews, I will ask that you use those two
24 exhibits, which for the record are 48 and 119B. And if you
25 would, point out to the ladies and gentlemen of the jury what
26 part of the shoe was left in that impression and how you were
27 able to make your determination?

28 A. If you first just look at the photograph, what you
29 see is a, what appears to be a heel area of a shoe, and in

Joe Andrews - DIRECT

1 the middle of the design you see what appears to be on first
2 glance like an "A" with some kind of little squiggly design
3 on the top of it. Then you have a series of Chevron patterns
4 which is the up and down "V" shape pattern that you can see
5 in the impression. If you look at the bottom of the shoe,
6 you see that -- you see that same in the middle of the heel
7 area. You see that basic "A" design, and when you look at it
8 on the shoe, it is basically a kind of a stylized 2. And
9 when you think about it, when you put it down on the surface,
10 what it does is that it appears backwards on the surface. So
11 you have got -- that is one of the reasons you make test
12 impressions so that you can take a test impression and lay it
13 directly on top of your image so that you are comparing it in
14 the same orientation.

15 But what you have got is the overall size of the
16 "A" shaped design in the center of the heel. You have got
17 the designs of the Chevron pattern that go up and down across
18 the top, and then the spacing of those designs. The size,
19 the shape, and the spacing of all the parts of the design in
20 the heel area itself is consistent with the impression
21 depicted in the photograph in State's Exhibit 48.

22 One thing that is really hard to see in the
23 photograph, but if you look right at the top of the heel area
24 in the visible impression, you see part of a letter. And if
25 you look at the sole of the right shoe, what that is is the
26 stylized "F" in the name Fila. And that is depicted; you can
27 actually see that particular letter in the impression left at
28 the crime scene.

29 Q. Okay. If you would, take your seat for a minute.

Joe Andrews - DIRECT

1 **BY MR. EVANS:** And Your Honor, may I pass these
2 to the jury?

3 **BY THE COURT:** They have been admitted. You can.
4 (Witness resumes witness stand; exhibits passed to
5 the jury.)

6 BY MR. EVANS:

7 Q. Mr. Andrews, were you able to make or have an
8 opinion based upon reasonable scientific certainty whether
9 the bloody tennis shoe tracks were made by a shoe consistent
10 with the type and size shoe that would have been found in the
11 tennis shoe box that was recovered from the Defendant's
12 house?

13 A. Yes, sir. I was.

14 Q. And what was that determination?

15 A. Based on the outsoles that were submitted as being
16 the same outsoles that would have been on that pair of shoes
17 that was originally in that box, the impressions found at the
18 crime scene are consistent with a pair of shoes of that
19 particular size and design. And therefore, the shoes that
20 were originally in that box could have been a source of these
21 impressions.

22 Q. Okay. Were you also asked to make a determination
23 of some gunshot residue tests in this case?

24 A. Yes, sir. I was.

25 Q. I will hand you Exhibit 94 and ask if you have seen
26 this exhibit before?

27 A. Yes, sir. I have. This is a standard gunshot
28 residue evidence collection kit marked with the name Curtis
29 G. Flowers. I can recognize it by the Mississippi Crime

Joe Andrews - DIRECT

1 Laboratory case number, exhibit number, and it bears my
2 initials on the green seal on the end.

3 Q. And who submitted that to you?

4 A. It was submitted to the crime laboratory by MHP CIV
5 Investigator Jack Matthews.

6 Q. What is contained in that exhibit?

7 A. This particular exhibit contains a gunshot residue
8 information sheet and four samples designed to be used to
9 collect samples from the hands of the person being sampled.

10 Q. Let me look at that just one second before I go
11 further. (Mr. Evans looks at exhibit.) Would you explain to
12 the ladies and gentlemen of the jury how that kit is used?

13 A. Yes, sir.

14 Q. The proper procedure?

15 A. Proper procedure. Gunshot residue samples are
16 submitted to the crime laboratory from persons believed to
17 have been in the environment of a discharged weapon. The
18 kits are designed to collect four separate samples from a
19 person's hands; those areas being designated as the back of
20 the right hand, the palms of the right hand, the back of the
21 left hand, and the palm of the left hand. Normally we
22 specify the back of the hand as being the area between the
23 first finger and the thumb on the web area on the back of the
24 hand. And if you think about holding a weapon in a normal, a
25 handgun in a normal fashion, that would be the area of the
26 hand exposed to residue being emitted by the weapon. The
27 palms of the hands include the palms themselves and the inner
28 surfaces of the fingers. So you get four separate samples.
29 These particular kits are designed to be analyzed using a

Joe Andrews - DIRECT

1 scanning electron microscope, so the actual sample stubs
2 themselves consist of a small aluminum stub coated with a
3 double sided sticky tape. And it's designed to collect the
4 sample by gently patting the stub or the sticky area on the
5 area being sampled. And any microscopic particles will be
6 recovered onto that sticky surface and can then be analyzed
7 at the crime laboratory.

8 Q. All right, you have being described being four
9 tubes or vials in that kit; is that correct?

10 A. Yes, sir.

11 Q. And is that the four that you were talking about
12 being for the back of the right hand, the palm of the right
13 hand, the back of the left hand, and the palm of the left
14 hand?

15 A. Yes, sir, and that's the way the actual little
16 containers are marked, just that way.

17 Q. All right, is there also a sheet that is in that
18 envelope?

19 A. Yes, sir. There is a gunshot residue analysis
20 information form which is designed to be completed by the
21 officer collecting the kit to provide information based on
22 the time, the suspected time of the shooting, who the kit is
23 being collected from, and the time and the location of when
24 the samples are collected.

25 Q. What time was that sample collected?

26 A. This particular sample is dated as being collected
27 on, at 1400 hours which would be 2:00 PM.

28 Q. All right, the first thing I want to go into in
29 relationship to that, I want you to assume at this point for

Joe Andrews - DIRECT

1 your opinion that this crime occurred somewhere around a
2 quarter to 10:00 to a few minutes after 10:00 in the morning.
3 Is there anything significant about the fact that they were
4 not able to recover this kit until 2:00 PM?

5 A. Just to explain a little bit about what gunshot
6 residue is, the gunshot residue that we test for is residue
7 produced during the discharge of the weapon, composed
8 primarily of components from the primer composition in a
9 modern handgun load or a modern firearm load. When the
10 firearm is discharged, a lot of this elemental composition is
11 vaporized into gases which will escape from any opening in
12 the weapon and be forced out from those openings and will
13 have a tendency as it strikes the cooler surrounding air to
14 condense back into solid particles. And those solid
15 particles are normally microscopic in size, and then they
16 will settle on to the person or clothing of really anything
17 in close proximity to that weapon.

18 Our particular test is designed to find those
19 microscopic particles and then test them elementally to
20 determine if they have the right composition. Like anything
21 else that is microscopic in size and deposited loosely on a
22 surface, any type of activity on or about that surface can
23 remove those particles. So normally after a few hours, the
24 possibility of you finding gunshot residue on the hands of a
25 person who has fired a weapon go down significantly because
26 any type of activity - them rubbing their hands together,
27 putting their hands in their pocket, if they have washed
28 their hands - you are going to remove those microscopic
29 particles, and they won't be there to be found.

Joe Andrews - DIRECT

1 Q. Specifically, what are the particles that you are
2 looking for in gunshot residue?

3 A. To positively identify a particle as gunshot
4 residue, it has to have the proper microscopic morphology
5 which is a size and a shape, and we normally are looking for
6 particles somewhere between 1 micron and 20 microns in
7 diameter. And to give you a reference scale, a human head
8 hair is about 80 microns in diameter. So a 1 micron
9 particle, you could take 80 of them, line them up in a row
10 and cover them with one human hair. So you are talking about
11 particles that are invisible to the naked eye. They also
12 have to have a round spherical, molten appearance under the
13 microscope, and they have an elemental composition made up
14 primarily of lead, barium and antimony. And those three
15 elements in a combination of a spherical molten particle have
16 been found to be unique to gunshot residue.

17 So if you can find the particles with the right
18 morphology, with the right elemental composition, it allows
19 you to positively identify that particle as gunshot residue.

20 Q. In this particular case, and I will get back to
21 some of this other; but did you, in fact, find a particle of
22 gunshot residue in the samples that were sent to you from
23 Curtis Flowers?

24 A. Yes, sir. I did.

25 Q. And where was that particle located?

26 A. I recovered or found one particle of, that could be
27 positively identified as gunshot residue on the sample from
28 the back of the right hand.

29 Q. I want to direct you to the sheet that was enclosed

Joe Andrews - DIRECT

1 in that and ask you if from that sheet, there is indication
2 of whether this Defendant is right or left handed?

3 A. According to the information sheet, it is marked as
4 being suspect is right handed.

5 Q. Now again, based upon your experience and
6 expertise, if a person that is right handed were to fire -
7 and for the purpose of your benefit since you weren't here -
8 a .380 automatic pistol with their right hand, where is the
9 place that would be most likely to find gunshot residue?

10 A. On the back of the right hand.

11 Q. Now if I understood you right, what you are saying
12 is there is no other way in nature that you are aware of that
13 lead, barium and antimony are ever present in this condition
14 in a spherical shape other than in gunshot residue?

15 A. These particular particles because of their
16 morphology and elemental composition are considered unique to
17 gunshot residue.

18 Q. So is that saying that with 100 percent certainty,
19 he had gunshot residue on the back of his right hand?

20 A. Yes, sir.

21 Q. Now I want you to go back to the shoe impression
22 for just a minute. You have talked about the fact that just
23 looking at them, the impression, the bloody impression would
24 look reversed because it has been stepped down on and the
25 shoe picked up; is that correct?

26 A. Yes, sir.

27 Q. And that to make a positive determination, you made
28 an impression of the right outsole that you have described.
29 I think it was 119B; is that right?

Joe Andrews - DIRECT - CROSS

1 A. Yes, sir. That's correct.

2 Q. Did you compare the impression that you made with
3 the bloody tennis shoe track?

4 A. Yes, sir. I did.

5 Q. Were they consistent?

6 A. Yes, sir.

7 Q. Was there anything inconsistent about them?

8 A. No, sir.

9 Q. In size, shape or any other way?

10 A. No, sir.

11 Q. Is it your impression based upon scientific
12 certainty that the bloody tennis shoe track is consistent
13 with having been made by the exact same type and size shoes
14 that would have been in the box recovered from Curtis
15 Flowers' house?

16 A. Yes, sir.

17 BY MR. EVANS: May I have the Court's indulgence
18 for just a moment.

19 (State's Counsel confer.)

20 BY MR. EVANS: Your Honor, I will tender the
21 witness.

22 CROSS-EXAMINATION BY MR. CARTER:

23 Q. Good morning, Mr. Andrews.

24 A. Good morning.

25 Q. Have we met before?

26 A. Yes, sir.

27 Q. Now the footwear impression that was at Tardy's and
28 that Melissa Shoene took pictures of and presented to you is
29 also consistent with a size 11; is that correct?

Joe Andrews - CROSS

1 A. I didn't conduct actual comparisons against a size
2 11 in that same design, but because of the way outsoles are
3 manufactured, I cannot exclude the possibility that a size 11
4 in that same design could have made that impression.

5 Q. A size 10 also can't be excluded; is that correct?

6 A. Yes, sir. If I can explain just to clarify.

7 Q. You can explain. Go ahead.

8 A. Most US manufacturers, the difference between half
9 sizes is approximately 3/16 of an inch in the overall design.
10 And their quality control in their manufacturing plants is
11 considered to be 3/16 of an inch between half sizes. So
12 depending on exactly what mold the outsole was made in, you
13 can get up to that much variation in half sizes. So
14 therefore, even though you compare against a 10 1/2, you
15 can't rule out the possibility that it could have been an
16 actual size 10 or an actual size 11 that could have produced
17 an impression similar in size.

18 Q. Okay, also Mr. Andrews, now you said that you used,
19 you made an impression, I believe, from the shoe sole that
20 you were able to compare to the picture that Melissa Shoene
21 took; is that correct?

22 A. Yes, sir. That's correct.

23 Q. Do you have that with you?

24 A. Yes, sir. I do.

25 Q. Where is it?

26 A. Right here.

27 Q. Okay, wait one second. I don't want it yet. Hold
28 on a second. I just wanted to make sure you had it. Put it
29 back. I want it though but not yet.

Joe Andrews - CROSS

1 A. Okay.

2 Q. Now despite all your excellent and good work that
3 you have done with respect to the footprint impressions, you
4 are not, you don't have any proof, and you are not here
5 trying to prove that Curtis Flowers actually went into
6 Tardy's; is that correct?

7 A. No, sir.

8 Q. Not yet. I can see you want to hand me that mighty
9 bad, but I don't want it yet. As a matter of fact, let me
10 have it.

11 A. (Witness hands transparency to Counsel.)

12 Q. Now how often do you receive gunshot residue
13 evidence collection kits to your office and are asked to
14 review them?

15 A. The crime laboratory receives gunshot residue kits
16 submitted by law enforcement agencies from all over the State
17 of Mississippi probably almost on a daily basis.

18 Q. And how often do you examine them? Is that what
19 you do primarily?

20 A. I do not spend as much of my time doing actual case
21 work examination now. As one of the senior examiners at the
22 crime laboratory, I have other duties. But I do still
23 routinely review the work of the primary gunshot residue
24 examiner who is working the majority of the cases now. But
25 at the time this case was submitted, this was one of my
26 primary duties.

27 Q. Okay, there is an instruction kit, I believe, that
28 comes along with these kits; is that correct?

29 A. Yes, sir.

Joe Andrews - CROSS

1 Q. And did you receive an instruction kit along with
2 this? I mean, I'm sorry; instruction, I guess letter or form
3 along with this kit?

4 A. Normally that kit comes with a sheet of
5 instructions on how to collect the samples and what area of
6 the hand to collect samples from. At the time that kit was
7 submitted that instruction sheet was not in that kit.

8 Q. Is that something that commonly occurs?

9 A. Yes, sir. Normally the officer -- and in fact, the
10 officers are instructed they can take that instruction sheet
11 out, read over it if they have never collected a kit or if it
12 has been a while since they have collected a kit to refresh
13 their memory as to the exact steps. And it's not necessary
14 for them to put the instruction sheet back in the kit. It's
15 there for their instruction.

16 Q. Now contained within or on the gunshot residue
17 analysis information form is a question that asks whether the
18 suspect washed his hands, and that is a question that should
19 be asked and answered; wouldn't you agree?

20 A. Yes, sir. It provides useful information as to
21 interpreting the results.

22 Q. Okay. And a suspect's occupation also provides
23 useful information--

24 A. Yes, sir.

25 Q. -- can be useful information?

26 A. Yes, sir, depending on what his occupation is. He
27 could be exposed to things in his environment that might be
28 similar to gunshot residue, and therefore, it would provide
29 information to the examiner in order to interpret what they

Joe Andrews - CROSS

1 find.

2 Q. And it's also important to know what the person did
3 or what activities the person was involved in between the
4 time the shooting allegedly occurred and the gunshot residue
5 tests were taken; is that correct?

6 A. Yes, sir. As I stated earlier, the activity of the
7 subject between the time of the shooting and the time of the
8 collection of samples can have a significant effect upon
9 whether or not you can, those particles will still be
10 present.

11 Q. Now the impression that you made from the Fila
12 Grant Hill soles there, you testified that it's consistent
13 with the impression that was left in the store, but despite
14 the fact that it's consistent, even during your own
15 impression, you still are unable to say that that shoe print
16 within Tardy's was definitely left by a 10 1/2 and a 10 1/2
17 only. Is that correct?

18 A. Yes, sir.

19 Q. You can have that back. (Counsel hands
20 transparency back to witness.) Now with respect to -- can
21 you ever see gunshot residue on a person's hand? Isn't it
22 visible at some point if it's enough? I don't know. I have
23 never seen it.

24 A. Normally if -- gunshot residue that we are
25 examining for can be associated with partially burned
26 gunpowder that could be visible to the naked eye, and it is
27 possible that you could, that some gunshot residue particles
28 can be produced that are up to 50 microns in diameter, which
29 if you were looking closely, you might could see with the

Joe Andrews - CROSS

1 naked eye. But the majority of the particles produced would
2 be invisible to the naked eye.

3 Q. Have you personally ever seen any with the naked
4 eye?

5 A. Some of the really large particles that I knew were
6 on the surface and I knew exactly where to look for, yes.

7 Q. One moment. (Pause) That shoe box that you
8 received, did you send it on to somebody else in the lab for
9 a footprints analysis -- not footprints; fingerprint
10 analysis?

11 A. Yes, sir. I believe it was examined for latent
12 prints.

13 Q. And you didn't do it, but as far as you know, you
14 believe somebody else did it?

15 A. Yes, sir.

16 Q. And you are not a latent print examiner; am I
17 correct?

18 A. No, sir.

19 Q. How -- were you able during the process of trying
20 to figure out what kind of shoe left that impression, able to
21 determine how plentiful, how -- find the right way to put
22 it -- how many of those shoes were manufactured by Fila?

23 A. Yes, sir. Fila provided me with statistics on how
24 many of each of the different styles of Grant Hill II's were
25 manufactured and shipped during certain periods of time.

26 Q. Okay, based on that information, how many could you
27 tell us were shipped that would have made that foot
28 impression? Could have made that foot impression?

29 A. If I can refer to my notes?

Joe Andrews - CROSS

1 Q. You can.

2 A. If you consider all of the Grant Hill II's that
3 were manufactured with that same outsole design and ranged in
4 either 10's, 10 1/2's or 11, it adds up to approximately
5 642,000 pair.

6 Q. Thank you. Now with respect to, is it important to
7 know whether -- strike that. If you are going to conduct a
8 gunshot residue test, isn't it important to not shake the
9 person's hand?

10 A. If I was going to conduct the test?

11 Q. Yes.

12 A. One of the things an officer collecting samples
13 from an individual needs to be sure of is that they try to
14 minimize any possibility that they, the person may
15 contaminate or remove particles from their hands before they
16 are sampled.

17 Q. Okay. Now with respect to the methods of
18 collecting the gunshot particles from a person's hand, is any
19 method more reliable than the other, than another one?

20 A. Scanning electron microscopy is considered to be
21 one of the most precise methods of sampling and testing for
22 gunshot residue.

23 Q. Now with respect to -- one moment. (Pause) Now
24 tell us about some of the ways that you can get gunshot
25 residue on your hand other than after firing a weapon.

26 A. As I stated earlier, we test to determine whether
27 or not a person has residue on their person, and normally you
28 can make one of three conclusions based on the presence of
29 gunshot residue. That person has either fired a weapon; they

Joe Andrews - CROSS

1 have been in close proximity to a weapon when it was
2 discharged; or they have handled a weapon or object that has
3 residue upon its surface. As I stated earlier, when the
4 weapon discharges, the residue is forced out of any opening
5 in the weapon pretty much as a cloud, and then settles on
6 anything in close proximity to that particular weapon. One
7 of the reasons you test the palms of the hands is to
8 distinguish between a person who maybe picked up a weapon
9 that had residue on its surface versus had it in his hand
10 when it was discharged. So you can never absolutely say
11 based on the presence of gunshot residue that that person
12 actually fired a weapon, but you can say he has been in the
13 environment of a discharged weapon either by discharging it
14 himself, being in close proximity, or handling something that
15 has residue on it.

16 Q. So you can actually touch a gun that has been shot
17 when you were not present when it was shot, but touch it
18 later and possibly get gunshot residue on your hand. Is that
19 correct?

20 A. Yes, sir. That is possible.

21 Q. You can get, possibly get gunshot residue on your
22 hand by touching the hands of a person that has gunshot
23 residue on their hands; is that correct?

24 A. If they had residue on their hands, they could
25 transfer it to you; yes, sir.

26 Q. And it is also possible to get gunshot residue on
27 the back of the web of your hand if you pick up any object
28 that you hold in your hand such as a pen, if that pen had
29 gunshot residue on it. Is that correct?

Joe Andrews - CROSS

1 A. If it touched the back of your hand; yes, sir.

2 Q. Now with a small amount and that's the smallest,
3 the amount that you mentioned, one micron; is that the
4 smallest amount that the microscope will pick up?

5 A. A single particle is the smallest individual unit
6 of gunshot residue you can find.

7 Q. Okay, and that's what you found is a single
8 particle; is that correct?

9 A. Yes, sir. That's correct.

10 Q. And a single particle of gunshot residue is not
11 exclusively indicative that a person shot a gun; is that
12 correct?

13 A. Once again, it just indicates that that person has
14 been in the environment of a discharged weapon.

15 Q. Or in the environment where a gun has been
16 discharged?

17 A. Or where one has been discharged, yes.

18 BY MR. CARTER: One moment. I think I'm
19 finished. (Pause.)

20 Q. Now isn't it true, Mr. Andrews, that you don't know
21 whether or not the gunshot residue tests were conducted with
22 excellence or without some kind of contamination taking
23 place?

24 A. There is no way I can determine that based on my
25 examination at the crime lab; no, sir.

26 Q. And with respect to this case, Mr. Flowers is the
27 only person that you received a gunshot residue kit from; is
28 that correct?

29 A. Yes, sir. That's correct.

Joe Andrews - REDIRECT

1 **BY MR. CARTER:** One moment, Your Honor. I think
2 I'm finished.

3 (Defense Counsel confer.)

4 **BY MR. CARTER:** No further questions.

5 REDIRECT EXAMINATION BY MR. EVANS:

6 Q. Mr. Andrews, do you always have to depend on the
7 officer following the proper procedure?

8 A. Yes, sir. We depend on the fact that he normally
9 will.

10 Q. And you were asked about being one particle. Can
11 you be just as positive that this is gunshot residue on the
12 Defendant's hand with one particle as you could with many
13 particles?

14 A. All it takes is one particle to make a positive
15 identification. Yes, sir.

16 Q. You were asked about his employment. Would it make
17 any difference in your finding if you found out that at the
18 time that he was unemployed?

19 A. No, sir.

20 Q. So that wouldn't be applicable to what you would be
21 doing; is that correct?

22 A. No, sir. Once again, you normally use his
23 employment or his activities just as a source of possible
24 sources for particles that could be similar to gunshot
25 residue that allows the examiner to interpret particles that
26 might be found on the subject's hands.

27 Q. And in this case there wasn't any particles
28 similar. You did, in fact, find gunshot residue?

29 A. Yes, sir. That's correct.

Joe Andrews - REDIRECT

1 Q. Now may I see the imprints that you made from the
2 shoe.

3 A. (Witness hands transparency to Counsel.)

4 Q. Is this the same imprints that you made in the
5 comparison that you testified to earlier?

6 A. Yes, sir.

7 BY MR. EVANS: Your Honor, I offer this into
8 evidence.

9 BY THE COURT: Any objection?

10 BY MR. CARTER: Let me look at it for a second
11 because there was more than one in that package.

12 (Pause while Mr. Carter reviews the exhibit.)

13 BY MR. CARTER: No objection.

14 BY THE COURT: Let it be admitted.

15 (TRANSPARENCY OF SHOE PRINT IMPRESSION WAS MARKED
16 AND RECEIVED IN EVIDENCE AS STATE'S EXHIBIT S-123.)

17 BY MR. EVANS:

18 Q. Mr. Andrews, can you say to a hundred percent
19 degree of scientific certainty that the bloody tennis shoe
20 track that was left at Tardy's store was consistent with
21 having been made by the same size and type shoes found, that
22 would have been found in State's Exhibit 79A, the Fila tennis
23 shoe box recovered from Curtis Flowers' house being M's Grant
24 Hill II MID's, size 10 1/2?

25 A. Yes, sir. They would have been. The impressions
26 from the crime scene are consistent with a pair of shoes that
27 would have been in that particular box.

28 BY MR. EVANS: Nothing further of this witness,
29 Your Honor. We would ask that he be finally

Bench Conference

discharged.

BY MR. CARTER: He is finally discharged.

BY THE COURT: You are free to go, Mr. Andrews.

WITNESS EXCUSED.

BY MR. EVANS: May we approach for a minute, Your Honor?

BY THE COURT: Yes.

(CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE JURY AS FOLLOWS:)

BY MR. EVANS: Your Honor, we are getting very close. We may have one, maybe two very short witnesses. But to make sure that we can go ahead and announce as quick as possible, does the Court have any problem with us breaking for lunch now.

BY THE COURT: No, we will do that and break until 1 o'clock, and that will give you an hour and 20 minutes to do all that.

BY MR. EVANS: All right, sir.

BY MR. CARTER: Your Honor, we have one other question. Your Honor, we have a Dr. Sinha, who works at Reliagene, I think in Houston today, I believe. And supposedly, he can't get here until Wednesday-- I mean until Thursday. And since they are resting, we are going to try to conduct our case in a way that we could have him by, to put him on by Wednesday, but he is going to give testimony that Ann Montgomery, who used to work for him who is no longer there; they don't know where she is, and I couldn't find her. But he supervised her work. I'm wondering whether if

Bench Conference

1 somehow we are finished before Thursday -- if we are
2 finished by Thursday, I guess I'm trying to get a feel
3 whether the Court is willing to wait until Thursday
4 until he gets here, or will the Court require us just
5 to put in, I guess Ann Montgomery's previous court
6 testimony?

7 **BY THE COURT:** Who is Ann Montgomery?

8 **BY MR. CARTER:** Ann Montgomery is a DNA--

9 **BY MR. DE GRUY:** -- She is the lab tech from
10 Reliagene who testified in the last trial.

11 **BY MR. EVANS:** Basically, all she said was that
12 the clothes that were sent had no significant evidence
13 on them.

14 **BY MR. CARTER:** They had stains on them, but she
15 said--

16 **BY MR. EVANS:** -- blood but they weren't
17 connected to this case.

18 **BY THE COURT:** Well, let me ask you this. This
19 guy that you have got called, if he didn't make the
20 examination, he can't testify to that, can he?

21 **BY MR. CARTER:** He supervised her and therefore,
22 he participated in it. I mean I don't have a problem
23 with just putting in the testimony. I wasn't sure if
24 there would be some kind of objection or not.
25 Therefore, I called him just to make sure that we
26 still get it in, one way or another.

27 **BY THE COURT:** She is the one that actually did
28 the testing? She is the one did it?

29 **BY MR. CARTER:** That's my understanding. Yes,

Bench Conference

1 sir.

2 BY THE COURT: And she is unavailable?

3 BY MR. CARTER: She doesn't work there any more,
4 and I couldn't find out where she did work based on,
5 through them or anything else that I could do. I
6 don't know where she--

7 BY MR. EVANS: -- We contact her all the time.

8 BY MR. CARTER: Well, she is not there any more.

9 BY THE COURT: Hold on just a minute. Let me get
10 the jury out of here just a second.

11 END BENCH CONFERENCE.

12 BY THE COURT: Ladies and gentlemen, we are going
13 to take the lunch break now. You can go with the
14 bailiffs. (Audience starts to rise.) That is not for
15 everybody else now. That is just for the jury.
16 Everybody else be seated. I'm not releasing court
17 yet.

18 JURY LEFT THE COURTROOM FOR LUNCH.

19 (FURTHER CONFERENCE AT THE BENCH WITH THE JURY
20 OUT:)

21 BY THE COURT: First, let me ask this question
22 which may solve any dilemma we might have. Have you
23 got any objection to them putting on her testimony
24 from the other trial?

25 BY MR. EVANS: I have not even looked at it. I
26 don't think so, but I would need to look at it before
27 I could say for sure because I wasn't expecting that.
28 But probably not, and we may be able to even stipulate
29 that there was blood found on his clothes, but it was

Bench Conference

1 not determined that it was from any of the victims in
2 this case.

3 BY MR. CARTER: That is pretty much all she did,
4 all she said.

5 BY MR. EVANS: But why they want that, I can't
6 understand.

7 BY THE COURT: Well, that is beside the point.
8 That is not my problem. My problem is keeping the
9 case moving.

10 BY MR. EVANS: We can probably agree to a
11 stipulation on it.

12 BY MR. CARTER: Yeah, we can--

13 BY THE COURT: -- Well, y'all depending on what
14 the stipulation is, y'all are willing to agree to
15 that?

16 BY MR. CARTER: Yes, sir.

17 BY THE COURT: All right. We will start back at
18 1 o'clock.

19 (FOLLOWING THE NOON RECESS ON FEBRUARY 10, 2004,
20 THE TRIAL CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
21 DEFENDANT AND THE JURY ALL PRESENT:)

22 BY MR. HILL: Your Honor, we call John Hodges.

23 BY THE COURT: Has he been sworn?

24 BY MR. HILL: No, sir. I don't believe he has.

25 JOHN HODGES,
26 a white male called to testify as a witness by the State of
27 Mississippi, having first been duly sworn, testified as
28 follows, to-wit:

29 BY THE COURT: State your name.

John Hodges - DIRECT

1 **BY THE WITNESS:** John Hodges.

2 DIRECT EXAMINATION BY MR. HILL:

3 Q. Mr. Hodges, I'm going to ask you to speak up if you
4 will.

5 A. Okay.

6 Q. Make sure that everybody over here can hear you.
7 Did you know Derrick Stewart?

8 A. Yes, sir.

9 Q. I think they called him BoBo. Did you know him?

10 A. Yes, sir.

11 Q. What was your relationship with him?

12 A. Best friends.

13 Q. How long had you known him?

14 A. All my life.

15 Q. Did you see him the night of July 15, 1996, and the
16 morning of July 16, 1996?

17 A. Yes, sir.

18 Q. What had y'all done together that evening?

19 A. He had an all star baseball game out here at the
20 park in Winona, recreational park.

21 Q. And on that day and time; that is, July 15 and 16
22 of 1996, do you know how old Derrick Stewart was?

23 A. Yes, sir.

24 Q. How old was he?

25 A. Sixteen.

26 Q. Did you go to school with him?

27 A. Yes, sir.

28 Q. What, of course, this was in the summer time, but
29 what grade had he just completed?

John Hodges - DIRECT

1 A. Tenth grade.

2 Q. Were y'all the same age?

3 A. Yes, sir.

4 Q. So BoBo was between his tenth and eleventh year of
5 high school?

6 A. Yes, sir.

7 Q. Did you see him that night, July 15?

8 A. Yes, sir.

9 Q. What was the circumstances of that?

10 A. Just normal, after the baseball game, we went out
11 for a little while and then come back to his house and.

12 Q. Did you spend the night with him?

13 A. Yes, sir.

14 Q. That next morning when y'all got up, did you carry
15 him anywhere?

16 A. To work.

17 Q. Where was he working at the time?

18 A. Tardy Furniture.

19 Q. Did you drive him to work that morning around 9
20 o'clock?

21 A. Yes, sir.

22 Q. Did you actually take him to the store and let him
23 out?

24 A. Yes, sir.

25 Q. When you drove up, was that in front of Tardy's?

26 A. Yes, sir.

27 Q. When you drove up in front of Tardy's, did you see
28 anybody else standing outside in front of the store?

29 A. Robert Golden.

John Hodges - DIRECT

1 Q. And did you see BoBo talk to Robert?

2 A. He spoke to him.

3 Q. Approach him?

4 A. Yes, sir.

5 Q. Did you see Derrick Stewart any time after that?

6 A. Yes, sir.

7 Q. Where was he?

8 A. In the hospital.

9 Q. Was that here in Winona?

10 A. No, sir.

11 Q. Where was he?

12 A. Jackson.

13 Q. How long did he live after that day, just
14 approximately.

15 A. Five days. Five or six days, something like that.

16 Q. Did you visit him down in the hospital?

17 A. Yes, sir.

18 Q. And where did y'all go to school?

19 A. Winona High School.

20 BY MR. HILL: Tender the witness, Your Honor.

21 BY MR. CARTER: No questions, Your Honor.

22 BY THE COURT: You may step down, sir. He is
23 finally excused, isn't he?

24 BY MR. EVANS: Yes, sir.

25 BY THE COURT: You are free to go.

26 WITNESS EXCUSED.

27 BY THE COURT: Who will you have next?

28 BY MR. EVANS: Your Honor, the State of
29 Mississippi rests on its case in chief.

Motion - JURY OUT

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STATE OF MISSISSIPPI RESTS.

BY MR. DE GRUY: We have two motions to make.

BY THE COURT: Okay. Ladies and gentlemen, there is some stuff I have to hear outside y'all's presence. I need for you to go back to the jury room.

JURY LEAVES THE COURTROOM.

BY MR. DE GRUY: Your Honor, our first motion is that the testimony of this last witness had no relevance at all to the charges in this case, and it was, could be characterized as nothing but victim character and impact evidence. And at this stage in the proceedings it is clearly improper, and we would move for a mistrial.

BY MR. HILL: Your Honor, first of all, it shows that young Mr. Stewart, it tells how old he was which we think is important in this case.

BY MR. DE GRUY: What legal relevance does the age--

BY THE COURT: -- Why don't you let him finish his argument.

BY MR. DE GRUY: Okay.

BY MR. HILL: It also brings out that he was at work that morning in the time frame after 9 o'clock and that Robert Golden was outside when he arrived. And other than the testimony that he knew him well, went to school with him, dropped him off at work that day, and then saw the other victim outdoors, and how long he lived we think that is a part of the elements of this case. And we therefore see nothing improper

Motion - JURY OUT

1 or inadmissible with that testimony. It was, as you
2 could see, very brief.

3 BY MR. DE GRUY: Absolutely no relevance, Your
4 Honor.

5 BY THE COURT: Okay. The time frame part of it
6 is relevant based on when he arrived at work. Also,
7 the rules and the law require that we have
8 contemporaneous objections to testimony. Certainly
9 you can't let it all go in and then ask me to rule. I
10 must be asked to rule at the time it comes in, and the
11 Defense did not do that. So it's too late, although I
12 do find that it has some relevance, and the motion for
13 a mistrial is overruled. All right.

14 BY MR. DE GRUY: Your Honor, the statement that
15 was provided to us as to what this witness would
16 testify to had none of the information other than the
17 approximate time included in it. So our position is,
18 our objection, they knew it was improper, and our
19 objection is made immediately.

20 BY THE COURT: No, your objection was not made
21 immediately. It was made after he had testified,
22 completed testimony, and in fact, after you said that
23 you had no questions. So that is not correct.

24 BY MR. DE GRUY: And so the record is clear, Your
25 Honor, I think we have provided the State an
26 opportunity to show relevancy. But I understand the
27 Court's ruling, and I will move to our second motion.
28 It's a motion for a directed verdict.

29 BY THE COURT: Have you got any argument you want

Motion - JURY OUT

1 to make on that?

2 BY MR. DE GRUY: No, Your Honor.

3 BY THE COURT: Okay. At this stage of the trial,
4 the Court must take the evidence in the light most
5 favorable to the State. In considering the evidence
6 in that light, I find that the State has made a prima
7 facie case, and the motion for a directed verdict is
8 overruled.

9 Okay. Y'all want some time before you get
10 started?

11 BY MR. CARTER: Yes, we hadn't anticipated it
12 being quite this quick. Yeah, we need a little while.

13 BY THE COURT: Well, I didn't mean a little
14 while. I mean a few minutes.

15 BY MR. CARTER: Well, a few minutes.

16 BY THE COURT: Okay, we will take a short break
17 while we do that.

18 (FOLLOWING A RECESS ON FEBRUARY 10, 2004, THE TRIAL
19 CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE DEFENDANT, AND
20 THE JURY ALL PRESENT:)

21 BY THE COURT: Who will you have first?

22 BY MR. CARTER: Essa Campbell. Essa Ruth
23 Campbell.

24 BY THE COURT: Have any of these been sworn?

25 BY MR. CARTER: I don't think so.

26 ESSA RUTH CAMPBELL,
27 a black female called to testify as a witness by the
28 Defendant, having first been duly sworn, testified as
29 follows, to-wit:

Essa Campbell - DIRECT

1 **BY THE COURT:** Come around and have a seat up
2 here. State your name, please, ma'am.

3 **BY THE WITNESS:** Essa Ruth Campbell.

4 DIRECT EXAMINATION BY MR. CARTER:

5 Q. Ms. Campbell, what is your address at this time?

6 A. 701B First Street, Simpson Drive.

7 Q. And where are you working at this time?

8 A. Winona Manor.

9 Q. How long have you been at Winona Manor?

10 A. For thirteen years.

11 Q. What is your job title there?

12 A. I'm a CNA.

13 Q. Certified nursing assistant; is that what that
14 stands for?

15 A. Yes, sir.

16 Q. Now what are your hours now?

17 A. 7:00 to 3:00.

18 Q. Have they been 7:00 to 3:00 for a while?

19 A. Every since I have been there.

20 Q. Every since you have been there. Do you know a
21 Doyle Simpson?

22 A. Yes, I do.

23 Q. Is there a relationship?

24 A. He is my brother.

25 Q. Now you remember the killings at Tardy's Furniture
26 store back on July 16, 1996?

27 A. Yes, I do.

28 Q. Now I know that has been a long time, about eight
29 years. But do you remember seeing Doyle Simpson and his car

Essa Campbell - DIRECT

1 on that particular day?

2 A. I seen his car going on 82 east.

3 Q. Towards town?

4 A. Going 82 west going towards McDonald's.

5 Q. Going toward McDonald's. I don't really know. Let
6 me see, McDonald's. Is it on -- now we have the 82 now that
7 you can take from Greenwood and it will take you on to
8 Starkville. Is that the 82, or are you talking about the old
9 82?

10 A. The old 82. Okay.

11 Q. Is that the, the 82 that you are talking about, is
12 it the one that comes down not too far from Winona Manor?

13 A. Yes.

14 Q. I'm not sure what that is called at this point.
15 And you saw the car, and was it going towards town or away
16 from town?

17 A. Away from town.

18 Q. From town. And you are sure that it was Doyle's
19 car; is that correct?

20 A. Yes.

21 Q. How do you recognize that car? How are you
22 familiar with that car?

23 A. Because he used to park it in my driveway when I
24 was staying on Allen Street over in the project.

25 Q. Okay, and how is it that you were able to see it?
26 Where were you when you saw it?

27 A. I was on the front porch with a resident.

28 Q. Okay, and is that at Winona Manor?

29 A. At Winona Manor.

Essa Campbell - DIRECT - CROSS

1 Q. Do you remember about what time you saw him as best
2 you can recall? I know it has been a long time.

3 A. Best I can remember between 9:30 and 10:00,
4 something like that.

5 Q. And could you see who was in the car?

6 A. I seen -- because I mean I know it was him because
7 he used to wear shades all the time, dark shades, and he had
8 the window down.

9 Q. And that person you saw in the car had dark shades
10 on?

11 A. Uh-hum.

12 (Mr. Carter gets out large photograph of car.)

13 Q. Does that look like your brother Doyle's car?

14 A. Yes.

15 Q. And what color is this car, the best you can tell
16 from this photograph?

17 A. It's brown. It's brown with a dark brown stripe.

18 BY MR. CARTER: One moment. I think I tender.
19 Hold one second.

20 (Defense Counsel confer briefly.)

21 BY MR. CARTER: We tender, Your Honor.

22 CROSS-EXAMINATION BY MR. EVANS:

23 Q. Good evening, Ms. Campbell.

24 A. Good evening.

25 Q. You are Doyle's sister?

26 A. Yes.

27 Q. Does that make you the Defendant's aunt?

28 A. Yes.

29 Q. And you have described Doyle's car as being brown

Connie Moore - DIRECT

DIRECT EXAMINATION BY MR. CARTER:

Q. Could you tell us where you presently live, Ms. Moore?

A. 34 Old Highway 82 East.

Q. And where are you employed?

A. At Kruger International.

Q. Is that--

A. In Winona.

Q. And do you know Curtis Flowers?

A. Yes, I do.

Q. And how do you know him?

A. We was boyfriend and girlfriend, dating at the time.

Q. Okay, and where did you all used to live?

A. 702B McNutt Drive.

Q. How long had y'all lived there before the murders occurred at Tardy's if you remember?

A. I can't remember. It was a couple of years, I know.

Q. Do you remember the day of the murders?

A. Yes.

Q. Who was living with you at the time when those murders occurred back then?

A. It was me, my son Lemarcus, Brittany and Merissa.

Q. Do you also have a son named Marcus Moore?

A. Yes, sir. I do.

Q. How old is he now?

A. How old is Marcus?

Q. How old is he now?

Connie Moore - DIRECT

1 A. He is 19.

2 Q. And at that time, at the time that these murders
3 occurred, Marcus wasn't living with you; is that correct?

4 A. Correct.

5 Q. Do you recall when he had moved away from you?

6 A. It was 15th of January, '95.

7 Q. And that would have been -- was that 1996?

8 A. No, it was in '95.

9 Q. It was in '95, okay. Did you ever buy Marcus any
10 tennis shoes?

11 A. Yes, sir.

12 Q. I'm sure you probably bought him a lot, but do you
13 remember buying him specifically a pair of tennis shoes
14 that -- well, do you remember buying him any Filas?

15 A. Yes, sir.

16 Q. Do you remember buying him any Grant Hill Filas?

17 A. Yes, sir.

18 Q. Where did you buy those from if you remember?

19 A. The Shoe Department in Greenwood.

20 Q. What size did you buy?

21 A. A 10 1/2.

22 Q. Now when he moved out in January of '95, were those
23 shoes left at your house or do you know?

24 A. No, sir.

25 Q. So--

26 A. He moved out in '96, correct.

27 Q. He moved out in--

28 A. January of '96.

29 Q. January of '96, okay. And at the time he moved out

Connie Moore - DIRECT

1 were you there? Were you at home when he packed his clothes
2 and all that kind of stuff?

3 A. No, sir.

4 Q. Where were you at?

5 A. Work.

6 Q. You knew he was leaving though; right?

7 A. Well, yes, sir. My son had called me. Lemarcus
8 had called me, and he was showing out at home. He had
9 already packed his clothes and stuff.

10 Q. Now when he left, those Grant Hill Fila shoes
11 wasn't left with him, were they?

12 A. No, sir.

13 Q. Now do you know when those shoes were taken out of
14 your house?

15 A. When he left, I guess. I hadn't seen them.

16 Q. Now after the murders -- strike that. How did you
17 find out about the murders?

18 A. Well, I was at work, and a lot of people was
19 talking about it.

20 Q. Where were you working then?

21 A. Richardson Brothers.

22 Q. And what time did you get off work that day?

23 A. I think it was around -- I can't remember.

24 Q. I know it has been a long time. But at some point
25 the police came to your house; is that correct?

26 A. Correct.

27 Q. How many times did they come?

28 A. It was a couple of times they came; well, a lot of
29 times.

Connie Moore - DIRECT

1 Q. If you remember, can you tell me the first date,
2 the first time that they came there? Do you remember the
3 date? If you don't, that is fine.

4 A. Not really.

5 Q. What happened the first time they came to your
6 house if you recall?

7 A. Well, the first time they came they took me to
8 where the murders occurred to talk to me; Ms. Vanhorn did.

9 Q. Okay, the first time they came to your house and
10 what happened?

11 A. That was the day -- the day I got off work, they
12 come and they took me down to Tardy Furniture Company where
13 it had happened, the incident, to talk to me.

14 Q. Okay. Talked to you at Tardy's Furniture store?

15 A. Uh-huh.

16 Q. Did you go inside the building?

17 A. Yes, I did.

18 Q. Okay. Ms. Vanhorn came and got you?

19 A. Uh-hum.

20 Q. Did she do anything at your house?

21 A. Uh-uh. Not as I recall.

22 Q. And how did you get back home on that occasion?

23 A. She brought me.

24 Q. Okay, how long were you down at Tardy's?

25 A. Not long.

26 Q. Not long?

27 A. I can't remember.

28 Q. The bodies weren't there when you got down there,
29 were they?

Connie Moore - DIRECT

1 A. No.

2 Q. Did she tell you why she wanted you to go to
3 Tardy's?

4 A. They just wanted to talk to me.

5 Q. Okay, then the police came back again?

6 A. Uh-hum.

7 Q. Who came that time? Do you know?

8 A. Not really.

9 Q. I'm sorry?

10 A. No.

11 Q. Now--

12 A. -- like a lot of them was coming. John Johnson had
13 came several times. Officer Hargrove, he came. But you
14 know, I can't remember the date, you know.

15 Q. Now the day that Ms. Vanhorn came, did any police
16 officers, other police officers come with her?

17 A. I can't remember.

18 Q. Now the second time that they came to your house,
19 what happened?

20 A. Well, they searched my house.

21 Q. They searched your house?

22 A. Uh-hum.

23 Q. What did they take, if anything?

24 A. A shoe box.

25 Q. Did they take anything else?

26 A. Uh-uh.

27 Q. Did they find anything at your house other than
28 shoes -- a shoe box?

29 A. (Witness shakes her head.)

Connie Moore - DIRECT

1 Q. Did they find any money at your house on any
2 occasion?

3 A. Uh-hum.

4 Q. What did they do with that money?

5 A. Gave it back to me. They counted it and gave it
6 back.

7 Q. Gave it back?

8 A. Uh-hum.

9 Q. Did the police tell you what they were looking for
10 when they came to your house on either occasion?

11 A. Uh-uh.

12 Q. Did you allow them to walk around, search wherever
13 they wanted to?

14 A. Yes, sir.

15 Q. Where was -- did they come in your house and search
16 for that box and locate it, or did they get that box some
17 other kind of way?

18 A. I just gave it to them.

19 Q. And where did you get it from?

20 A. Off my shelf. I kept hair bows in it. Out of the
21 closet, it was like a shelf.

22 Q. Okay. And where did they find this money at at
23 that time?

24 A. A head board.

25 Q. Did they find that, or you found it and showed it
26 to them?

27 A. I can't remember.

28 Q. Now what were you doing with that box? Was it any
29 purpose you held onto that box?

Connie Moore - DIRECT

1 A. Well, I had Christmas bows in it.

2 Q. Christmas bows?

3 A. Uh-hum. I not only had one; I had two.

4 Q. Two shoe boxes?

5 A. Uh-hum.

6 Q. What was the other kind?

7 A. It was Grant Hill Fila's.

8 Q. What?

9 A. It was a Grant Hill Fila too.

10 Q. Okay. Did they -- where did the other one come
11 from?

12 A. Both of them was there. I got both of them from
13 Greenwood.

14 Q. Who did you buy those shoes for?

15 A. My daughter Merissa.

16 Q. Now at some point Curtis left Mississippi; is that
17 correct?

18 A. Correct.

19 Q. Where did he go?

20 A. Texas.

21 Q. Did he come back to visit from time to time?

22 A. Uh-hum.

23 Q. And I believe you followed him there; is that
24 correct?

25 A. Yes.

26 Q. And you both came to back to visit from time to
27 time?

28 A. Yes, sir.

29 Q. And did something happen in Texas eventually?

Connie Moore - DIRECT

1 A. Say what?

2 Q. In January?

3 A. Yes, sir. They arrested him. He was arrested.

4 BY MR. CARTER: One moment, Your Honor. I think
5 I'm finished.

6 BY MR. CARTER:

7 Q. That money you had--

8 BY THE BAILIFF: Judge Morgan, the jury got my
9 attention and said they can't hear her.

10 BY THE COURT: Ma'am, you need to speak up so the
11 jury can hear. Okay?

12 BY THE WITNESS: Okay.

13 BY MR. CARTER:

14 Q. That money you had, where did it come from?

15 A. Paycheck.

16 Q. Whose paycheck?

17 A. Mine.

18 Q. Around that time that the murders occurred, what
19 kind of shoes was Curtis wearing?

20 A. Nike.

21 Q. Did anybody at any point come to your house and ask
22 for those particular Nikes?

23 A. No, sir.

24 BY MR. CARTER: One moment, Your Honor. I think
25 I tender, but let me just check.

26 (Defense Counsel confer.)

27 BY MR. CARTER:

28 Q. Now when you say Curtis was arrested in Texas, it
29 was for the murders at Tardy's; is that correct?

Connie Moore - CROSS

1 A. Correct.

2 BY MR. CARTER: We tender.

3 BY MR. EVANS: One second, Your Honor.

4 CROSS-EXAMINATION BY MR. EVANS:

5 Q. Ms. Moore, who did you say was living with you on
6 the day of the murders?

7 A. Me and my kids.

8 Q. Who else?

9 A. And Curtis.

10 Q. Okay, you didn't mention him while ago though, did
11 you?

12 A. I don't think I did.

13 BY THE COURT: You have to speak up, ma'am. I
14 can't even hear you, and I am closer to you.

15 BY THE WITNESS: Okay.

16 BY MR. EVANS:

17 Q. Curtis Flowers was living with you on McNutt Street
18 at the time of the murders, wasn't he?

19 A. Yes, sir.

20 Q. As a matter of fact, he was at your house when you
21 went to work that morning?

22 A. Yes, sir.

23 Q. Now how old was Lemarcus at that time?

24 A. Eleven.

25 Q. And he was actually wearing a size seven shoe at
26 that time, wasn't he?

27 A. No, sir.

28 Q. Why would he have had a pair of seven shoes on that
29 day?

Connie Moore - CROSS

1 A. Well, he didn't.

2 Q. So if the officer said he had on a pair of seven
3 shoes when they came to the house, that wouldn't be right; is
4 that right?

5 A. No, sir.

6 Q. And if he wore a size seven shoe, it wouldn't make
7 sense that you bought him a pair of ten and a half's, would
8 it?

9 A. No.

10 BY MR. CARTER: Your Honor, I object. He asked,
11 he said Lemarcus. There is a Lemarcus and a Marcus in
12 this family, and we have got to be clear about that
13 because it causes a lot of confusion.

14 BY THE COURT: All right. Let's be quiet in the
15 audience.

16 BY MR. EVANS:

17 Q. Now there was \$255 in cash taken out of your
18 headboard; is that correct?

19 A. I don't remember the amount.

20 Q. You don't remember the amount?

21 A. Uh-uh.

22 Q. Why was the money in there?

23 A. Pay my rent. I kept money--

24 Q. --To pay your rent? Who put it in there?

25 A. I did.

26 Q. But you don't know how much was there?

27 A. No, sir. It was--

28 Q. -- Do you know what bills were there?

29 A. I keep mostly all of my bills there that I do.

Connie Moore - CROSS

1 Q. Do you know what bills, denominational bills?
2 20's, 5's, 10's?

3 A. No, sir. I don't.

4 Q. Yet you put it there?

5 A. Yes, sir.

6 Q. Now this shoe box right over here was recovered
7 from your house, wasn't it?

8 A. Yes, sir.

9 Q. And you now know that the tracks left at the store
10 were made by a pair of shoes like this, don't you?

11 A. Yes, I do.

12 Q. And you are telling this jury that you had
13 Christmas balls in that box?

14 A. Christmas bows, yes, sir.

15 Q. Christmas bows. Isn't it true that that box was
16 empty when the officers came to your house and found it?

17 A. No, sir. It wasn't. Like I said, it was another
18 box too. That wasn't the only box there.

19 Q. But you are saying that that box was not empty--

20 A. -- no, sir.

21 Q. -- when the officers came to your house?

22 A. It was not empty.

23 Q. So now there won't be any misunderstanding, how old
24 was Brittany at this time?

25 A. Brittany, uh, seven years -- three.

26 Q. How old was Marcus?

27 A. Uh, he was 11.

28 BY THE COURT: You have to speak up.

29 BY THE WITNESS:

Connie Moore - CROSS

1 A. Marcus was 11.

2 Q. How old was Lemarcus?

3 A. Nine because they are two years apart. I think
4 it's nine.

5 Q. The shoes that you say that you bought, the person
6 you say you bought that pair of 10 1/2 Fila Grant Hill Fila
7 II MID shoes for is Marcus, your 11 year old son?

8 A. Yes, sir. Well, he is not 11 now, but he was 11.

9 Q. Eleven years old at the time?

10 A. That's right.

11 Q. And you are denying that he was wearing a size
12 seven shoe at that time?

13 A. Yes, sir.

14 Q. Marcus was actually at your house that morning too,
15 wasn't he?

16 A. No, sir.

17 Q. He didn't spend the night there that night?

18 A. No, sir.

19 Q. At the time of the murders Curtis was wearing a
20 size 10 1/2 shoe, wasn't he?

21 A. No, sir.

22 Q. What was he wearing?

23 A. Eleven.

24 Q. Well, why would the Nike shoes that he had had on
25 been a 10 1/2 then?

26 A. Well, I don't know that.

27 Q. Who told you they were 11's?

28 A. Told me what?

29 Q. Who told you they were 11's?

Connie Moore - CROSS

1 A. What's that?

2 Q. The shoes that he was wearing.

3 A. Those shoes was a 10 1/2.

4 Q. Who told you the shoes that Curtis was wearing were
5 11's?

6 A. That's what he wore, 11.

7 Q. And you are sure about that?

8 A. Uh-hum.

9 Q. You knew that they were withholding his paycheck at
10 work, didn't you?

11 A. No, sir.

12 Q. You didn't know that?

13 A. No, sir.

14 Q. Are you sure about that?

15 A. Uh-hum. He said something about it, but I didn't
16 really--

17 Q. All right, now I'm fixing to get into where you
18 have talked about it before, so if you want to change your
19 story; do you know about it? Did you know about it?

20 A. Well, I know they didn't, you know, about the
21 batteries. I knew about the batteries.

22 Q. You knew they were withholding his paycheck was my
23 question. Is that answer yes or no?

24 A. Okay. Yes, sir.

25 Q. It's yes?

26 A. Yes, sir.

27 Q. Why did you just say no a few minutes ago?

28 A. I didn't understand the question.

29 Q. You knew that he had been let go from work too,

Connie Moore - CROSS

1 didn't you?

2 A. Well, she was calling so.

3 Q. You knew he had been fired, didn't you?

4 A. Well, that's what everybody else said, but Ms.
5 Tardy had been calling for him. So I guess he wasn't fired
6 if she was calling.

7 Q. Well, if she fired him, why would she be calling
8 him?

9 A. I don't know.

10 Q. The fact is that he was calling her every day,
11 wasn't he?

12 A. Not as I know of.

13 Q. What time did you go to work that morning?

14 A. I had to be at work at 7 o'clock; about 10 till.

15 Q. So what time did you leave?

16 A. I can't remember.

17 Q. I'm not trying to get it down to the minute, but
18 can you give us a rough idea?

19 A. Like I said, it was about ten minutes, I think.

20 Q. About ten until 7:00?

21 A. Uh-hum.

22 Q. When was the next time that you saw Curtis that
23 day?

24 A. I can't remember. Because like I said, I worked
25 that day, so I don't know.

26 Q. All right, what time did you get off work?

27 A. I couldn't remember whether it was 3:00 or 5:00. I
28 can't remember.

29 Q. So from approximately 6:50 to 3 or 5 o'clock, you

Connie Moore - CROSS

1 didn't see him that day?

2 A. No, sir.

3 Q. You don't know how much money was in the bed?

4 A. No.

5 Q. You don't know what bills were up there; is that
6 right?

7 A. Like I said, I had all my bills there.

8 Q. No, I'm talking about bills as far as five's,
9 ten's--

10 A. -- Oh, no, sir.

11 Q. --and twenties. You are denying that Curtis was
12 wearing a size 10 1/2 shoe at this time?

13 A. Yes, sir.

14 Q. And you are denying that your son Marcus was
15 wearing a size 7 shoe?

16 A. Yes, sir.

17 BY MR. EVANS: One moment.

18 (State's Counsel confer.)

19 BY MR. EVANS: Your Honor, that's all we have of
20 this witness.

21 BY MR. CARTER: No more questions.

22 BY THE COURT: Is she finally excused?

23 BY MR. CARTER: Yes, sir.

24 BY THE COURT: Ms. Moore, you are free to go.

25 WITNESS EXCUSED.

26 BY THE COURT: Who do you have next?

27 BY MR. CARTER: Billy Glover, I believe.

28 BILLY JAMES GLOVER,

29 a black male called to testify as a witness by the Defendant,

Billy Glover - DIRECT

having first been duly sworn, testified as follows, to-wit:

BY THE COURT: State your name, please, sir.

BY THE WITNESS: Billy James Glover.

DIRECT EXAMINATION BY MR. CARTER:

Q. Where do you live at the present time, Mr. Glover?

A. Carrollton, Mississippi.

Q. You used to work for J.D. Ferguson; is that correct?

A. Yeah.

Q. Now do you know Curtis Flowers?

A. Yeah.

Q. Do you also known James Ward?

A. Yeah.

Q. How do you know James Ward?

A. I been knowing James for years, friend of the family.

Q. Friend of the family. Do you know who he is married to?

A. Yeah.

Q. Who?

A. Priscilla Ward.

Q. Is Priscilla any kin to Curtis Flowers?

A. That's her brother.

Q. Now do you remember the day that the people were killed at Tardy's?

A. Yeah.

Q. Do you remember going over to James Ward and Priscilla Ward's house?

A. Yeah.

Billy Glover - DIRECT

1 Q. And as best you can recall, or tell us where did
2 they live?

3 A. Over, uh, Cemetery Road.

4 Q. That's on?

5 A. Over by--

6 Q. Is that the west side of Applegate? That side?

7 A. Yeah, it's over by Knox School.

8 Q. Did you go over to that house on the day of the
9 murders at Tardy's?

10 A. Yeah.

11 Q. About what time did you get over there?

12 A. About a quarter to 9:00, about fifteen until 9:00.

13 Q. How long did you stay over there?

14 A. About an hour, hour and a half.

15 Q. Was there anything particular about the weather
16 that day that makes you remember that?

17 A. Yeah, it rained.

18 Q. Did you see Mr. Flowers that day?

19 A. Yeah.

20 Q. About what time did you see him?

21 A. It was a little after 9:00, about 15 or 20 minutes
22 after 9:00.

23 Q. Okay, and did you talk to him?

24 A. Yeah.

25 Q. Did y'all spend any time together, you and him
26 talking?

27 A. Yeah, we spent about 15 or 20 minutes together
28 talking.

29 Q. One minute. Who else was at that house that day?

Billy Glover - DIRECT - CROSS

1 A. His wife's cousin Latoya.

2 BY MR. CARTER: I think -- one minute, Your
3 Honor.

4 (Defense Counsel confer briefly.)

5 BY MR. CARTER: We tender.

6 BY MR. EVANS: One second, Your Honor.

7 CROSS-EXAMINATION BY MR. EVANS:

8 Q. Good evening, Mr. Glover.

9 A. How are you doing?

10 Q. Now it's your testimony that the Defendant came to
11 Priscilla's house about 9:15 in the morning; is that correct?

12 A. Yeah, something like that.

13 Q. And you said it was raining?

14 A. Not at the precise time he came, it wasn't raining.

15 Q. Well, you said that's -- why did the raining bring
16 your attention to that day?

17 A. Well, because me and James, usually when it rains
18 us out from work, we go fishing. It had started raining that
19 morning when I went up there. But during that time, it had
20 stopped, and it started back on later on that day.

21 Q. It didn't actually start raining until after
22 dinner, did it?

23 A. Well, when I was coming from Carrollton, it was
24 raining up 82, but not no heavy rain, you know, misting rain.

25 Q. What is your connection with the Flowers?

26 A. None. I mean we just -- fishing, do a lot of
27 fishing together, and me and James grew up together mainly.

28 Q. Okay, so you and Priscilla's husband are good
29 friends?

Billy Glover - CROSS

1 A. Yeah.

2 Q. Was Priscilla there at the time you were there?

3 A. When I first got there she was, but she left.

4 Q. And you are sure about the fact that it was about
5 9:15 when he came there?

6 A. Well, something, yes, sir, roughly, yeah. 9:15,
7 9:30, something like that.

8 Q. Are you aware that he said it was 11 or 12 o'clock
9 before he got there?

10 BY MR. CARTER: Your Honor, I object to that. He
11 has no way of knowing that, and he knows that is an
12 improper question.

13 BY THE COURT: Sustained.

14 BY MR. EVANS: No further questions.

15 BY MR. CARTER: One moment.

16 (Defense Counsel confer.)

17 BY MR. CARTER: No further questions. Thank you.

18 BY THE COURT: Is he finally excused?

19 BY MR. CARTER: Yes, sir.

20 BY THE COURT: Mr. Glover, you are free to go.

21 WITNESS EXCUSED.

22 BY MR. CARTER: One moment, Your Honor. I think
23 I want Ms. Blissett.

24 LATARSHA BLISSETT,

25 a black female called to testify as a witness by the
26 Defendant, having first been duly sworn, testified as
27 follows, to-wit:

28 BY THE COURT: State your name.

29 BY THE WITNESS: Latarsha Blissett.

Latarsha Blissett - DIRECT

DIRECT EXAMINATION BY MR. CARTER:

Q. Good afternoon, Ms. Blissett. Where do you live now?

A. Winona, Mississippi.

Q. And how long have you lived in Winona, Mississippi?

A. Twenty-six years.

Q. Is that all your life?

A. Uh-huh.

Q. Are you married?

A. No.

Q. Do you know Clemmie Fleming?

A. Yes.

Q. Any -- are y'all related?

A. Yes, she is my cousin.

Q. Now do you remember that some murders occurred at Tardy Furniture store back in July of 1996?

A. Yes.

Q. Have you ever talked to Clemmie about the murders that occurred at Tardy's Furniture store and whether she saw anything?

A. Yes. I talked to her about it right after it, the first trial.

Q. And what did she say to you regarding seeing Curtis Flowers near Tardy's or by Tardy's or anything like that?

A. She told me that she would tell the people that she saw Curtis running from the store because the man that worked in the store asked her to say that, and she wouldn't have to pay off her furniture.

Q. Okay. Did she say whether she actually saw Curtis

Latarsha Blissett - DIRECT

or not?

A. She told me she didn't see him.

Q. Now when you and Clemmie had these conversations, where were you? Do you remember where you were when she told you these things?

A. The first time we talked about it we was at my house.

Q. Okay, and did you talk to her about it a second time?

A. Yes.

Q. Where did she tell you that time?

A. That she was going to tell the truth when she, if she had to go back to court, that she did not see Curtis running from the store.

Q. Okay. Now back in 1996, what were you doing during the day?

A. I was going to school.

Q. What school were you at?

A. Winona High School.

Q. And do you remember some police officers coming to school, to your school?

A. Yes.

Q. Okay, do you remember who came?

A. John Johnson and a lady.

Q. What happened after they came?

A. Um, they asked me to go, go somewhere with them, and I went, not knowing where he was going to go but I went because I knew he was a police.

Q. How old were you back then?

Latarsha Blissett - DIRECT

1 A. Eighteen.

2 Q. Did they let you talk to your mom before you went?

3 A. No. She didn't even know I was gone.

4 Q. Where did they take you?

5 A. To Greenwood.

6 Q. What happened when you got to Greenwood?

7 A. They took me to this place, and we sat down and
8 they asked me what was my name when I got there, and I told
9 them. And he started telling me that he knew I was trying to
10 get a mobile home, and he knew my boyfriend and just started
11 telling me stuff that he knew about me and what I was trying
12 to do and places that I had been going looking for a house,
13 and asked me if I know \$30,000 will buy a mobile home and
14 questions like that. And I told him yes, I know.

15 Q. And that was Mr. Johnson that said these things to
16 you?

17 A. Yes.

18 Q. And did Mr. Johnson mention Curtis Flowers and
19 Tardy's Furniture store during these conversations on that
20 day?

21 A. Yes. He mentioned that after that, asking me about
22 all the questions at first.

23 Q. Okay. One moment. Not only is Clemmie your
24 cousin, y'all grew up together, didn't you?

25 A. Yes.

26 BY MR. CARTER: One moment, Your Honor. I think
27 I tender.

28 (Defense Counsel confer.)

29 BY MR. CARTER: We tender, Your Honor.

Latarsha Blissett - CROSS

CROSS-EXAMINATION BY MR. EVANS:

1 Q. Ms. Blissett, who is your boyfriend?

2 A. Earl Campbell.

3 Q. Earl is the Defendant's cousin, isn't he?

4 A. Yes.

5 Q. You live with him, don't you?

6 A. Yes.

7 Q. You lived with him back then too, didn't you?

8 A. No, I was living at home with my mom.

9 Q. When did y'all start living together?

10 A. Probably in '97.

11 Q. Isn't it a fact that you have asked Clemmie to lie
12 for the Defendant?

13 A. No.

14 Q. Now you know that Clemmie has said numerous times
15 exactly what she saw, don't you?

16 A. I don't know how many times she said what she saw.
17 I just know what she done told me.

18 Q. Are you aware that she has testified before this
19 jury what she saw?

20 A. Yes. I know there has been court before.

21 Q. You have tried to get her not to do that, didn't
22 you?

23 A. No, I just told her to tell the truth if she wanted
24 to do that. That's what she told me she was going to do.

25 Q. And how -- what is your boyfriend's name?

26 A. Earl Campbell.

27 Q. How is Earl related to the Defendant?

28 A. Um, cousin.
29

Latarsha Blissett - CROSS

1 Q. First cousin?

2 A. I-- no. I don't think so.

3 Q. Has Earl tried to get Clemmie to change her
4 statement?

5 A. Earl don't talk to Clemmie.

6 Q. So you are the only one that has talked to her
7 about that?

8 A. Yes. We talk about a lot of things.

9 BY MR. EVANS: Nothing further of this witness,
10 Your Honor.

11 BY MR. CARTER: No further questions.

12 BY THE COURT: Is she finally excused?

13 BY MR. CARTER: Yes, sir.

14 BY THE COURT: You are free to go, ma'am.

15 BY THE WITNESS: Thank you.

16 WITNESS EXCUSED.

17 BY MR. CARTER: One moment, Your Honor. We don't
18 know if we have got anybody else. (Pause) One moment,
19 Your Honor. I think we have got Mary Ella Fleming
20 back there.

21 (Mr. Carter left the courtroom briefly and then
22 returns.)

23 BY MR. CARTER: Mary Ella Fleming.

24 MARY ELLA FLEMING,
25 a black female called to testify as a witness by the
26 Defendant, having first been duly sworn, testified as
27 follows, to-wit:

28 BY THE COURT: Have a seat up here, ma'am. State
29 your name.

Mary Ella Fleming - DIRECT

1 BY THE WITNESS: Mary Ella Fleming.

2 BY THE COURT: Ms. Fleming, if you would, talk
3 loud enough for them to hear you. Okay?

4 BY THE WITNESS: Mary Ella Fleming.

5 BY THE COURT: Thank you, ma'am.

6 DIRECT EXAMINATION BY MR. CARTER:

7 Q. Okay, Ms. Fleming, where do you live?

8 A. At 202 Academy Street.

9 Q. Is that Winona, Mississippi?

10 A. Yes, sir.

11 Q. Okay, where do you presently--

12 A. -- I can't hear you.

13 Q. What kind of work do you presently do?

14 A. CNA.

15 Q. Where do you work?

16 A. Greenwood Leflore Hospital.

17 Q. Now do you remember when the murders occurred at
18 Tardy Furniture store?

19 A. Yes, sir.

20 Q. How many siblings do you have? Sisters and
21 brothers?

22 A. Joann, me, Neechie, Robert and Clemmie. It is six
23 of us. It is seven of us.

24 Q. And name the sisters?

25 A. Joann, Neechie, Clemmie, Caresa.

26 Q. Okay. Do you know Curtis Flowers?

27 A. Yes, sir.

28 Q. And do you know Clemmie Fleming? That is your
29 sister; correct?

Mary Ella Fleming - DIRECT

1 A. Yes, sir.

2 Q. Now you recall the day that the murders occurred at
3 Tardy Furniture store; is that correct?

4 A. Yes, sir.

5 Q. Did you see your sister Clemmie on that day?

6 A. Yes, sir.

7 Q. Did she get-- where did you see her?

8 A. That morning.

9 Q. Where?

10 A. She came, she came to my house.

11 Q. And how did she get to your house?

12 A. I don't know how she got there.

13 Q. Now when she came to your house that morning, did
14 she make any complaints about anything?

15 A. No, she didn't.

16 Q. Did she say where she had been?

17 A. No, she didn't.

18 Q. Did she mention Tardy Furniture store in any way?

19 A. No, sir.

20 Q. And how long did she stay at your house?

21 A. All day.

22 Q. Okay, and did y'all at some point leave and go
23 somewhere?

24 A. We left after we heard about the murder and went
25 down to the store.

26 Q. Who is "we" that went down to the store? Who went
27 with you?

28 A. Me, my sister Neechie, my sister Clemmie, and a
29 friend girl named "BT".

Mary Ella Fleming - DIRECT

1 Q. Now prior to going down to Tardy's, all of you
2 together, did Clemmie mention anything about going there
3 earlier?

4 A. No, sir.

5 Q. Did she mention anything about her health?

6 A. No, sir.

7 Q. When y'all went down to Tardy's, what did y'all
8 see?

9 A. We seen the ribbon around the store.

10 Q. You are talking about that yellow tape?

11 A. Yes, sir. And there was a lot of people standing
12 around.

13 Q. What did y'all do once y'all got down there?

14 A. I told Clemmie; I said, "Clemmie," I said, "If we
15 would have came down to the store earlier like we said we was
16 going to go, we would have been caught up in there too." And
17 Clemmie said, "We sure would have."

18 Q. About what time, if you recall, did Clemmie get to
19 your house that morning?

20 A. She got there early. About maybe 8:00.

21 Q. Okay, you are estimating though; right?

22 A. Yes, sir.

23 Q. Now has anyone from the DA's Office or any
24 investigator came and talked to you about this case?

25 A. No, sir.

26 BY MR. CARTER: One moment. I think I'm
27 finished. (Pause) I tender.

28 CROSS-EXAMINATION BY MR. EVANS:

29 Q. Ms. Fleming, you are not denying that your sister

Mary Ella Fleming - CROSS - REDIRECT

1 was five months or more pregnant at that time, are you?

2 A. No, sir. I'm not.

3 Q. And you are saying you don't know what time any of
4 that was going on?

5 A. No, sir.

6 BY MR. EVANS: Nothing further.

7 BY MR. CARTER: One moment, Your Honor.

8 (Mr. Carter confers with Ms. Ferraro. Mr. de Gruy
9 has not been in the courtroom during the testimony of this
10 witness, but now he re-enters.)

11 REDIRECT EXAMINATION BY MR. CARTER:

12 Q. Do you know how she left your house?

13 BY MR. EVANS: Your Honor, that is not, that is
14 improper redirect.

15 BY THE COURT: Sustained.

16 BY MR. CARTER: One moment.

17 (Mr. Carter now confers with Mr. de Gruy.)

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
19 JURY AS FOLLOWS:)

20 BY MR. CARTER: Judge, I want to ask this lady
21 another question that I forgot to ask her. Clemmie --
22 I wanted to ask her if Clemmie mentioned to her that
23 she saw Curtis running, and I forgot to do it. I have
24 no problem with them recrossing if I can ask that
25 question.

26 BY MR. EVANS: He has already asked her if she
27 said anything about being down there, and it would
28 definitely be improper redirect. I would object.

29 BY MR. CARTER: Okay, but she did say she didn't

Mary Ella Fleming - Mary Jeanette Fleming

1 say anything about being at Tardy's. That's fine.

2 BY THE COURT: It would not be proper redirect
3 because he didn't go into any of that on cross.

4 BY MR. CARTER: Okay.

5 END BENCH CONFERENCE.

6 BY MR. CARTER: No further questions.

7 BY THE COURT: Is she finally excused?

8 BY MR. CARTER: Yes, sir.

9 BY THE COURT: You are free to go, ma'am.

10 WITNESS EXCUSED.

11 BY THE COURT: Who do you have next?

12 BY MR. CARTER: I don't think we have anybody
13 else right now, Your Honor. Can we get-- we have got
14 some coming though, so can we take a little break.

15 BY THE COURT: All right, ladies and gentlemen,
16 we will take a few minutes until some of these
17 witnesses get here. I need to see y'all up here. I'm
18 not going to need this.

19 (FOLLOWING A LONG RECESS, THE TRIAL RESUMED WITH
20 ALL COUNSEL, THE DEFENDANT, AND THE JURY ALL PRESENT:)

21 BY MR. CARTER: Mary Jeanette Fleming.

22 BY THE COURT: Mary Jeanette Fleming.

23 MARY JEANETTE FLEMING,

24 a black female previously called to testify and this time
25 called by the Defendant, having been previously sworn,
26 testified as follows, to-wit:

27 BY THE COURT: Wait a minute, ma'am. You have
28 already been sworn in, haven't you?

29 BY THE WITNESS: Oh, yes, sir.

Mary Jeanette Fleming - DIRECT

1 **BY THE COURT:** All right. Have a seat right
2 there.

3 **BY THE COURT:** State your name, please.

4 **BY THE WITNESS:** Mary Jeanette Fleming.

5 DIRECT EXAMINATION BY MR. CARTER:

6 Q. Ms. Fleming, I believe you were here yesterday
7 briefly; is that correct?

8 A. Correct.

9 Q. And at some point in time, Chief Johnny Hargrove
10 and Master Sergeant Jack Matthews or someone came and
11 questioned you concerning Curtis Flowers; is that correct?

12 A. Yes. I told you yesterday, but I remember Johnny
13 Glenn but not the other two. Didn't I tell you yesterday?

14 Q. Johnny Glenn; is that the same as?

15 A. Yes.

16 Q. Johnny Hargrove?

17 A. Yes.

18 Q. Okay. And you gave them a description of the
19 clothes that Mr. Flowers had on when you saw them; is that
20 correct?

21 A. Yes.

22 Q. When you saw him; I'm sorry. And when you talked
23 to them -- one minute. (Defense Counsel confer.)

24 Didn't you tell Mr. Hargrove or whomever you talked to that
25 Curtis was wearing, I think some black pants, white shirt, a
26 jacket sort of this color, but it was purple like all over,
27 sort of like a baseball jacket or something?

28 A. Yes, I did say that, but it wasn't purple. It was
29 gray.

Mary Jeanette Fleming - DIRECT

1 Q. Okay. But you did say black pants?

2 A. His pants wasn't black.

3 Q. So you didn't tell them that his pants were black?

4 Is that correct?

5 A. No, because his pants wasn't black, and what
6 difference do it make? I don't care if he was naked; I still
7 seen him.

8 BY MR. CARTER: May I approach the witness?

9 BY THE WITNESS: No.

10 BY THE COURT: Well, yes, he can, ma'am. That is
11 for me to decide. You can do that.

12 BY MR. CARTER:

13 Q. Can you look at this?

14 A. You better get away from me.

15 BY THE COURT: Wait a minute. Wait a minute,
16 Ms. Fleming. Now you only answer questions when you
17 are asked. You understand?

18 (Witness nods her head.)

19 BY THE COURT: Okay.

20 BY MR. CARTER:

21 Q. Can you look at this and tell me whether or not you
22 can identify it?

23 A. (Pause; Witness looks at document and hands it back
24 to Counsel but makes no response.)

25 Q. Can you identify what that is?

26 A. Uh-uh.

27 BY MR. CARTER: One moment, Your Honor.

28 (Defense Counsel confer.)

29 BY MR. CARTER:

Mary Jeanette Fleming - DIRECT

1 Q. So don't recognize this paper, and you don't know
2 what is on it? Is that right, Ms. Fleming?

3 A. Yeah, I know what's on it, but I didn't say -- he
4 didn't have on no black pants. I don't know what you are
5 talking about when I seen him. I don't care what is on that
6 paper.

7 BY MR. CARTER: I move for admission of this
8 document into evidence.

9 BY THE WITNESS: Didn't you bring it up here one
10 time?

11 BY THE COURT: Ma'am. Now I'm not going to tell
12 you but once more. You don't talk until you are asked
13 a question. Let me saw y'all up here.

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
15 JURY AS FOLLOWS:)

16 BY MR. DE GRUY: Your Honor, today she is clearly
17 denying that she gave that description. That is the
18 description that--

19 BY THE COURT: Oh, certainly she is. But the
20 question is not -- the question before the Court right
21 now is to whether or not this document is admissible
22 as evidence, as extrinsic evidence. And she has got
23 to, she has got to deny it under the rules before that
24 document is admitted. He can question her about it
25 all he wants to, but for the document to get in, she
26 must deny making the statement.

27 BY MR. DE GRUY: That's what she is doing, Your
28 Honor.

29 BY THE COURT: Well, not to me.

Mary Jeanette Fleming - DIRECT

1 **BY MR. DE GRUY:** She is denying making the
2 statement.

3 **BY THE COURT:** That was not clear to me that
4 that's what she was doing. You can ask further
5 questions, but at this point in time, I don't think
6 she has done that. She said she didn't know what that
7 was.

8 **BY MR. DE GRUY:** She doesn't know the document.
9 The document is a transcription done by the highway
10 patrol. She has never seen it before.

11 **BY THE COURT:** Okay. Then--

12 **BY MR. DE GRUY:** -- the statement.

13 **BY THE COURT:** But that question hasn't been
14 asked of her yet in that manner where she could have
15 any idea what he is talking about.

16 **BY MR. DE GRUY:** I think he is asking her did
17 she, did she give that description, and she is saying
18 no.

19 **BY THE COURT:** But that is not the issue. The
20 issue is whether that document goes into evidence.
21 That is what he is asking me at this point in time.
22 Under 613, it can only go in if she looks at that
23 document, explain to her what it is, and see if she
24 denies it. If she denies it, I'm going to let it in.
25 If she denies making that statement, I will let it in.

26 END BENCH CONFERENCE.

27 (Defense Counsel confer.)

28 **BY MR. CARTER:**

29 Q. Ms. Fleming, on two occasions I have passed you

Mary Jeanette Fleming - DIRECT

1 this document and asked you to look at it and tell me whether
2 you recognize it. Do you deny making this statement to
3 Mr. Hargrove and Mr. Matthews?

4 A. What statement?

5 Q. The statement I showed you.

6 A. Yeah, I made a statement to them.

7 Q. Do you deny making this statement?

8 A. What do it say?

9 Q. In making this statement that, whereas Mr. Matthews
10 asked you, "Do you remember what Curtis was wearing that
11 day?" Do you deny saying, "He was wearing some, I think,
12 some black pants, white shirt. It was a jacket sort of this
13 color. It was purple like all over, sort of like a baseball
14 jacket or something. He was dressed, you know, sort of
15 dressy like." Do you deny giving that statement to--

16 A. -- I gave a statement, but I told you I didn't say
17 black pants. He was not wearing black pants, and where that
18 come from, I do not know. Can't they make a mistake?

19 Q. So you deny saying black pants? Yes or no?

20 A. (No response.)

21 BY MR. CARTER: One moment. Well, Your Honor,
22 based on what she said, I take the position that she
23 is denying it, and therefore I move for admission of
24 this document into evidence.

25 BY THE COURT: Any objection, Mr. Evans?

26 BY MR. EVANS: No, sir. I don't have any
27 objection.

28 BY THE COURT: Okay, let it be admitted.

29 (INTERVIEW WITH MARY JEANETTE FLEMING PREVIOUSLY

Mary Jeanette Fleming - CROSS

1 MARKED AS DEFENDANT'S EXHIBIT D-1 FOR IDENTIFICATION WAS NOW
2 RECEIVED IN EVIDENCE.)

3 BY MR. CARTER: No further questions.

4 CROSS-EXAMINATION BY MR. EVANS:

5 Q. Ms. Fleming, when you talked to the officers, you
6 told them that the person you saw walking in the direction
7 toward Tardy's that morning was Curtis Flowers, didn't you?

8 A. Yes, sir. It was.

9 Q. And where did you see him?

10 A. He was on Campbell Street.

11 Q. Okay. Is there any doubt in your mind that the
12 person that you saw walking on Campbell Street not far from
13 Tardy Furniture going that direction was the Defendant Curtis
14 Flowers?

15 A. It was Curtis Flowers I seen. (Witness looking
16 toward the Defendant) Wasn't it?

17 BY MR. EVANS: Nothing further, Your Honor.

18 BY THE WITNESS: You know it--

19 BY MR. CARTER: --We have no further.

20 BY THE COURT: I'm sorry?

21 BY MR. CARTER: We have nothing further for her.

22 BY THE COURT: Okay. Ms. Fleming, you are
23 excused. This time finally, right?

24 BY MR. CARTER: Yes, sir.

25 WITNESS EXCUSED.

26 BY THE COURT: You have anybody else?

27 BY MR. CARTER: No, sir, not today.

28 BY MR. DE GRUY: No, Your Honor.

29 BY THE COURT: Ladies and gentlemen, we have some

Consideration of Instructions - JURY OUT

1 other witnesses, some of whom are out of town
2 witnesses, that have not arrived yet. So we are going
3 to quit a little earlier today than we have been
4 quitting. And they will, of course, take you back to
5 Grenada and get you fed and whatever. We will start
6 in the morning at 9 o'clock. We are going to stay and
7 do some work here after y'all have left which may help
8 us move along tomorrow. Okay.

9 JURORS LEAVE THE COURTROOM AT 3:45 PM.

10 **BY THE COURT:** Y'all want to see the Court's
11 instructions?

12 **BY MR. HILL:** Yeah, I guess that is as good a
13 place as any to start.

14 **BY THE COURT:** I have added two beyond my
15 original, my normal ones.

16 (Off the record while copies of the Court's
17 instructions were made for both counsel.)

18 COURT'S INSTRUCTIONS: BY MR. HILL: No objection
19 to the Court's instructions. No objection by the State to
20 the Court's instructions.

21 **BY MR. DE GRUY:** No objections by the Defense.

22 **BY THE COURT:** Okay. Well, let me do this then.
23 Instruction number 1 is also designated as C-1, and I'm going
24 to grant it. C-2, which is the instruction on note taking,
25 will be Instruction number 2, and it is given. C-3, which is
26 Instruction number 3, is the burden of proof instruction.
27 With no objection, it is given. The next one is the
28 informant instruction, which I will designate as C-4, and it
29 will be Instruction number 4. It is given. And the next one

Consideration of Instructions - JURY OUT

1 is going to be C-5, which is the identification instruction,
2 and it will be given as Instruction number 5. And let the
3 record reflect that all of those, as both sides just stated,
4 are granted by the Court without objection. Okay. Now I
5 don't have anybody's.

6 BY MR. EVANS: Do you have the file?

7 BY THE COURT: I'm sure they are probably in the
8 file, but I don't have them.

9 BY MR. EVANS: Do you have the file?

10 BY THE COURT: I have got a bunch of files.

11 BY MR. EVANS: I'm not sure.

12 BY MR. DE GRUY: Betty has an extra copy, Doug,
13 so she can run it off quick.

14 BY MR. HILL: Since I have got another copy of
15 mine, would you like to be looking at mine while he is
16 doing that?

17 BY THE COURT: Yes, sir.

18 BY MR. HILL: I haven't had a chance to sort
19 them, but S-1 is on top. And Your Honor, I would just
20 inform the Court that I think those are written in
21 circumstantial evidence case language, and I would,
22 you know, we are going to move to take that language
23 out. But otherwise the instructions are there. When
24 I did those in anticipation of the case over, I think
25 it has been over two weeks ago; I didn't know whether
26 it was going to be circumstantial or direct evidence
27 at the time.

28 BY THE COURT: Okay. The testimony of Odell
29 Hallmon would make this a direct evidence case.

Discussion of Tapes - JURY OUT

1 **BY MR. HILL:** Yes, sir.

2 **BY MR. DE GRUY:** We would object to that. We
3 have objected to Odell Hallmon's testimony already in
4 that it's not reliable testimony, that we hadn't been
5 provided it, what he actually testified to in advance.
6 But specifically, I think that in order to take the
7 case out of a purely circumstantial case, I don't
8 think Odell Hallmon sufficiently does that because of
9 the no corroboration of what he said.

10 **BY THE COURT:** Do you have any authority for that
11 proposition?

12 **BY MR. DE GRUY:** I think that the case is
13 Fairchild v. State where it discussed the not taking
14 it completely out of the circumstantial case. I think
15 the reliability of this witness, that one statement he
16 made having committed perjury prior is not sufficient
17 to take it out of the circumstantial case.

18 **BY THE COURT:** Will you furnish the Court with
19 that case?

20 **BY MR. DE GRUY:** I am trying to find the cite to
21 it, Your Honor.

22 **BY THE COURT:** For the record, let me say this;
23 that, of course, the credibility or the reliability of
24 Odell Hallmon is now a question of fact for the jury.
25 The statement about him testifying to things that
26 y'all had not been supplied with, I do not think is
27 accurate because I limited the State as to what they
28 could put on in relation to what they had furnished.
29 And I don't recall any statements made by him that

Discussion of Tapes - JURY OUT

1 were not furnished to you in discovery. So I think--

2 **BY MR. HILL:** -- We specifically covered that
3 point.

4 **BY THE COURT:** For the record, I think that is
5 inaccurate.

6 **BY MR. DE GRUY:** Your Honor, we would like--

7 **BY THE COURT:** -- but the record speaks for
8 itself.

9 **BY MR. DE GRUY:** We would like to make another
10 copy of the two Odell Hallmon tapes that they provided
11 us and make those part of the record for appeal. That
12 was our point, and we don't need to keep going over
13 this -- was that the statement that Odell Hallmon made
14 in this courtroom that he admitted, that Mr. Flowers
15 admitted to him that he killed these people was never
16 provided to us. We got, it was on the discovery
17 sheet. What was provided to us in the way of an
18 actual statement was him saying on two tapes that he
19 had not, and he admitted that on cross-examination.
20 So the one that has reliability that he said no, he
21 never told me and--

22 **BY MR. EVANS:** Your Honor, two interviews that I
23 had with him I furnished discovery, and it
24 specifically in the discovery and that is exactly what
25 I asked him, just what was in discovery.

26 **BY THE COURT:** Well, I found that there is no
27 discovery violation.

28 **BY MR. EVANS:** Yes, sir.

29 **BY THE COURT:** The question that I have about

Discussion of Tapes - JURY OUT

1 those tapes is how do they become a part of the
2 record?

3 **BY MR. EVANS:** He wasn't asked about the tapes.

4 **BY MR. CARTER:** I did ask him.

5 **BY THE COURT:** How do you get something in the
6 record if you haven't properly -- and there is no
7 witness to testify to them or anything. I mean these
8 are just tapes. I don't know anything about them.
9 How does that get in the record?

10 **BY MR. DE GRUY:** We offered to provide them to
11 the Court so the Court could review them. They were
12 provided to us in discovery from the State, and they
13 are not to be admitted before the jury and the jury to
14 see them. We are offering them to the Court,
15 proffering them to the Court as to what is on those
16 tapes. And it clearly goes -- the witness has
17 testified to so many different things and specifically
18 said to the District Attorney's investigators on these
19 two tapes that Mr. Flowers never told me he killed
20 those people. And it's critical to the Court's
21 determining, for the Court's determination of his
22 reliability which is key to admissibility. If it's
23 not reliable, what he testified to is not reliable,
24 it's not admissible.

25 **BY MR. EVANS:** Your Honor, he was asked about
26 those tapes when he was on the stand, and he admitted
27 that that is what he told them on that statement. He
28 also said he told me other things at different times.
29 They have asked him about it, and he has admitted that

Discussion of Tapes - JURY OUT

1 that is what is on the tape. It's not something that
2 is admissible.

3 **BY THE COURT:** Well, the evidence that is before
4 me is one, was there a discovery violation. I have
5 held that there was not. It was written discovery
6 furnished to the Defense that cited what he was going
7 to testify to. I limited his testimony to those
8 things that had been cited in that. Of course, I
9 haven't heard the tapes. They have not been proffered
10 in relation to any witness, and they are only
11 proffered at this time after Mr. Hallmon has already
12 testified, and while he was subject to cross-
13 examination. The reliability and credibility of
14 witnesses is an issue for the jury unless you can show
15 me otherwise.

16 So I don't know if there is any ruling for me to
17 make in relation to-- I have already ruled as to
18 Mr. Hallmon's testimony as he has testified before the
19 jury, so I made that ruling. The question is how do
20 the tapes become a part of the record. Who made the
21 tapes?

22 **BY MR. EVANS:** The tapes were made, I think both
23 of them were made by John Johnson.

24 **BY THE COURT:** Are they--

25 **BY MR. EVANS:** Those particular tapes.

26 **BY THE COURT:** Y'all don't want them played to
27 the jury; right?

28 **BY MR. DE GRUY:** No, he has testified to it. I
29 don't think they are admissible. He admitted that he

Discussion of Tapes - JURY OUT

1 made this inconsistent statement.

2 **BY MR. HILL:** If he admitted the content of the
3 tape, then that is the testimony.

4 **BY THE COURT:** Well, okay. Both sides
5 acknowledge then that it's not admissible?

6 **BY MR. EVANS:** Yes, sir.

7 **BY MR. DE GRUY:** We are agreeing it's not
8 admissible as a trial exhibit. My attempt was to make
9 it part of the appellate record. And we can do
10 that --

11 **BY THE COURT:** --Okay, well, I may can do it this
12 way then. Because of Rule 613, I rule that it is not
13 admissible because he did not deny making the
14 statement. That ruling is correct. You can proffer
15 it then in response to my sustaining the objection as
16 to admissibility. I think that will get it in that
17 way.

18 **BY MR. DE GRUY:** Yes, and we can do that if there
19 is any post trial motions.

20 **BY THE COURT:** Do what?

21 **BY MR. DE GRUY:** We can always do that and
22 through the witness at any post trial motions, if that
23 becomes necessary.

24 **BY THE COURT:** Okay. Do you want to introduce
25 the ones you have got now?

26 **BY MR. DE GRUY:** We would like to make a copy of
27 them.

28 **BY THE COURT:** Okay. Can we mark those as
29 exhibits now so we will know what we are talking

Further Consideration of Instructions - JURY OUT

1 about, what we are making copies of, for
2 identification?

3 (Defense Counsel confer.)

4 **BY THE COURT:** Why don't we do this; you go ahead
5 and mark them for identification. Turn them over to
6 her. When you get ready to make the copies, then we
7 will see that you get them back. How about that?
8 Then the Court Reporter has got custody of what we are
9 dealing with.

10 (VIDEOTAPE DATED 5/7/03 AT 11:34 OF ODELL HALLMON
11 ALONG WITH ACCOMPANYING CASSETTE WERE LATER MARKED AS
12 DEFENDANT'S EXHIBITS D-3 AND D-3A FOR IDENTIFICATION.
13 VIDEOTAPE DATED 5/7/03 AT 2:45 PM OF ODELL HALLMON AND
14 ACCOMPANYING CASSETTE WERE LATER MARKED AS DEFENDANT'S
15 EXHIBITS D-4 AND D-4A FOR IDENTIFICATION.)

16 INSTRUCTION NO. S-1: BY MR. DE GRUY: Now back to
17 the point that we are actually here on. Our position is
18 that-- and we have submitted some circumstantial evidence
19 instructions, and so that is our position, that it is still a
20 circumstantial case, and we have tendered instructions on
21 that as well.

22 **BY THE COURT:** Okay, give me the cite on
23 Fairchild.

24 **BY MR. DE GRUY:** I don't have the cite, Your
25 Honor. I will have to get that for you in the morning.

26 **BY THE COURT:** Okay. All right. Some of what we
27 are getting ready to do is going to be a little hypothetical,
28 but other than the argument about the circumstantial versus
29 direct case, do you have any objection to the form of S-1?

Further Consideration of Instructions - JURY OUT

1 **BY MR. DE GRUY:** No, Your Honor.

2 **BY THE COURT:** Okay.

3 **BY MR. DE GRUY:** We, in fact, agree to S-1 as it
4 was pre-filed.

5 INSTRUCTION NO. S-2: **BY THE COURT:** Okay. How
6 about S-2 with the same -- I understand we have the same
7 argument.

8 **BY MR. DE GRUY:** Right. We have no objection.

9 INSTRUCTION NO. S-3: **BY THE COURT:** What about
10 S-3?

11 **BY MR. DE GRUY:** No objection.

12 INSTRUCTION NO. S-4: **BY THE COURT:** And S-4?

13 **BY MR. DE GRUY:** No objection.

14 INSTRUCTION NO. S-5: **BY MR. HILL:** Before we
15 consider S-5, can I confer with Doug just a minute? I was
16 just checking S-5. We tender that as the next instruction.

17 **BY MR. DE GRUY:** We have no objection.

18 FORM OF THE VERDICT: **BY THE COURT:** I have got two
19 forms of the verdict things. Is there any reason for that?

20 **BY MR. HILL:** Let me look through here. It is
21 possible that one could be a--

22 **BY THE COURT:** I think it is just an extra copy.
23 Any objection to the form of the verdict?

24 **BY MR. DE GRUY:** I don't believe I have a copy of
25 the form--

26 **BY THE COURT:** -- I have probably got your copy.
27 I have got two.

28 (Pause while Mr. de Gruy looks at the form of the
29 verdict instruction.)

Further Consideration of Instructions - JURY OUT

1 **BY THE COURT:** Any objection to that form?

2 **BY MR. DE GRUY:** Your Honor, we don't object to
3 this form necessarily. However, we believe that the evidence
4 in this case has now raised, raised a question at least to
5 the jury as to whether or not this was a deliberate design
6 murder and not a capital murder based on the testimony that
7 the State, in fact, had introduced concerning difficulties at
8 work, Mr. Flowers' disagreement with Ms. Tardy for
9 withholding a check, and they have introduced that as a
10 possible motive. And if, in fact, the jury, based on the
11 evidence that the jury has before them, they could find
12 murder--

13 **BY THE COURT:** Either way.

14 **BY MR. DE GRUY:** Less than capital, and therefore
15 we think a murder instruction would also be proper. So we
16 will draft a murder instruction this evening, but also with,
17 the form of the verdict would have to be changed to include
18 that option.

19 **PRELIMINARY DISCUSSION OF DEFENDANT'S INSTRUCTIONS:**

20 **BY THE COURT:** All right. I don't have y'all's
21 instructions, and because we are going to have to change some
22 of this stuff, I am just, I am not going -- I have ruled on
23 mine. I'm not going to rule on the others.

24 **BY MR. HILL:** Judge, this may be theirs--

25 **BY MR. EVANS:** --They are in with that copy.

26 **BY THE COURT:** I have got it. Okay, I note from
27 the stuff y'all have given me, you have got the first four
28 are peremptory instructions, which of course, I'm not going
29 to rule on until we get to that point. I note the second one

Further Consideration of Instructions - JURY OUT

1 though, you have got two peremptories for Count One and don't
2 have one for Count Two in the stuff that is filed and before
3 me. So y'all need to make sure that you have one for Count
4 Two when we go over that tomorrow.

5 **BY MR. DE GRUY:** Yes, sir.

6 **BY THE COURT:** D-2 is a form of the verdict
7 instruction. We will have, we are going to just have one
8 form of the verdict, which we will have some agreement on
9 tomorrow. Don't we have to have-- have we got to have that
10 instruction about having a foreman, don't we? We have got
11 some capital instructions we don't have in mine. Okay. I
12 don't have a problem with D-3. We have got to have one that
13 tells them to do a foreman anyhow. That is a little bit
14 different, I think, from what I have been using, but we will
15 see. I kind of like that part about them sending notes out.
16 That kind of explains it a little bit better than we have
17 been explaining it.

18 INSTRUCTION D-4: **BY MR. DE GRUY:** I think D-4 is
19 covered in the Court's instruction, and we would withdraw
20 D-4.

21 INSTRUCTION D-5: **BY THE COURT:** What do you say to
22 D-5?

23 **BY MR. HILL:** I can't more strongly object to
24 D-5. I think that just confuses the whole issue of what the
25 law is.

26 **BY THE COURT:** I think it's an effort to define
27 "reasonable doubt." I will withhold my ruling on it until
28 tomorrow. I had hoped we could get all this done this
29 afternoon, but we are not going to be able to. I will have

Further Consideration of Instructions - JURY OUT
to rule again tomorrow.

INSTRUCTION NO. D-6 AND D-7: **BY THE COURT:** What do you say to D-6?

BY MR. HILL: It is circumstantial evidence. It depends on the Court's ruling.

BY THE COURT: Oh, yeah. D-7 is the same thing.

INSTRUCTION NO. D-8: **BY MR. HILL:** D-8 is an identification instruction that the Court has given.

BY THE COURT: Well, no, it's not. That itemizes things that they can consider. I've got that in my instruction. I'm going to give mine and not that one.

INSTRUCTION NO. D-9: **BY THE COURT:** I also have covered D-9 in my instructions.

INSTRUCTION NO. D-10: **BY THE COURT:** Okay, my -- I am going to give my identification instruction in lieu of D-10.

INSTRUCTION NO. D-11: **BY THE COURT:** D-11 is the sinker instruction. That is covered by C-1.

INSTRUCTION NO. D-12: **BY THE COURT:** Also D-12 is covered by C-1.

INSTRUCTION NO. D-13: **BY THE COURT:** And I'm not going to give D-13. Okay. You should redraft yours--

BY MR. HILL: Yes, sir.

BY THE COURT: -- in that form. You should find me the case law, and then also y'all need to redraft that second peremptory instruction as to Count Two. And then we will cover that when y'all finally rest tomorrow, and then we will submit it at such time as that is. Okay. These can be filed. These are the

Further Consideration of Instructions - JURY OUT

1 Court's instructions. The others -- let me just give
2 these others back to y'all until tomorrow. Well,
3 these have already been filed. I will put them in the
4 file.

5 BY MR. DE GRUY: Yeah. There is a copy in the,
6 of all the pre-filed ones from both of us in the file.

7 BY THE COURT: Oh, this is a copy; I'm sorry.

8 BY MR. DE GRUY: That is a copy that we just made
9 for you.

10 BY THE COURT: Okay, I will leave it right here
11 then.

12 BY MR. HILL: I have got copies as well.

13 BY THE COURT: Okay, I will leave this right
14 here. Okay, anything else today? Do y'all need
15 assistance in getting anybody here tomorrow?

16 BY MR. DE GRUY: No, Your Honor.

17 BY THE COURT: Okay.

18 BY MR. DE GRUY: We will be ready.

19 BY THE COURT: 9 o'clock.

20 BY MR. CARTER: Yes, sir.

21 COURT WAS RECESSED FOR THE DAY ON FEBRUARY 10, 2004.
22
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29

Roy Harris - DIRECT

COURT WAS REOPENED ON FEBRUARY 11, 2004, WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT:

BY THE COURT: You can bring the jury out.

JURY ENTERS THE COURTROOM.

BY THE COURT: Who will you have first?

BY MR. CARTER: Roy Harris.

ROY HARRIS,

a black male called to testify as a witness by the Defendant, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: Have a seat up here, Mr. Harris.

State your name, please, sir.

BY THE WITNESS: (No response.)

BY MR. CARTER: He is hard of hearing, Your Honor.

BY THE COURT: Mr. Harris. State your name.

BY THE WITNESS: Roy Edward Harris.

BY THE COURT: Mr. Harris, you need to talk loud enough for them to hear you. Okay?

BY THE WITNESS: (Witness nods his head.)

DIRECT EXAMINATION BY MR. CARTER:

Q. Where do you live now, Mr. Harris? What is your address?

A. Now?

Q. Yes.

A. Eupora. I live in Webster County, but I don't know besides in the country.

Q. Okay. And did you live in Winona at some point?

A. Uh-hum. I used to live in Winona.

Q. Okay. Do you remember the day that people got

Roy Harris - DIRECT

1 killed at Tardy's Furniture store?

2 A. That's right.

3 Q. And do you remember going downtown on that day?

4 A. Sure do.

5 Q. How many times did you go downtown?

6 A. Twice.

7 Q. Okay, tell us when you went the first time and the
8 streets you took and where you went?

9 A. I was alone, by myself. I was going over to Mr.
10 Boogerman's house to look at his truck to tell him what's
11 wrong with it. And I come on downtown, come down Front
12 Street, and turned and went up through by the Winona Bank. I
13 got at the three way stop right there at the post office. I
14 took a left and went down Church Street there. Well, the
15 street that is coming out from the furniture store and that
16 pressing shop, it wasn't on that street. It was the next
17 street up the hill on the left. A fellow run out in front of
18 across my car, and I liked to hit him. So I just kept on
19 going, and I looked back in the mirror, and I started to stop
20 and pick him up. And I said no. So I went on over to Mr.
21 Boogerman's house. He wasn't at home. I turned around, come
22 back out by J.J. Knox School. I hit 51 headed north. When I
23 got right there at Mr. Jeff's store there, I looked up at
24 Silver Street there. This same fellow come down that street
25 running.

26 Q. Describe this fellow for us.

27 A. Describe--

28 Q. -- Describe his looks.

29 A. Oh, he was about 5'8", light skinned, your

Roy Harris - DIRECT

1 complexion, real light skinned. He had on a bebop cap and a
2 white T-shirt.

3 Q. And later on did you go downtown again?

4 A. Yes, sir.

5 Q. And were you alone when you went the second time,
6 or was somebody with you?

7 A. Clemmie Fleming.

8 Q. Okay, tell us what happened that time.

9 A. Well, after I got back home, I told that girl about
10 the fellow that I like to have seen, I like to have hit, you
11 know. So Clemmie Fleming, she come over there, wanting me to
12 take her downtown to the furniture store to pay her furniture
13 bill. And so I left and come the same way I went. But
14 before we got to go over the hill to down to the furniture
15 store, she said, "That is all right. Take me over to my
16 mama's house." So I went the same way that I went the first
17 time. I got there at the post office. I said, "Clemmie," I
18 said, "Let me show you where I liked to have run over a
19 fellow at this morning." And I carried her and showed her,
20 and then I went on to her mama's house and dropped her off,
21 and I went back home.

22 Q. Okay. So the time that Clemmie Fleming was with
23 you, you never actually went to Tardy's?

24 A. We never did see nobody.

25 Q. And you never went to Tardy's and Clemmie -- you
26 never went to Tardy's and parked in front of Tardy's and
27 Clemmie asked -- did Clemmie ask you to go in and pay her
28 bill for her?

29 A. No.

Roy Harris - DIRECT

1 Q. Now you talked to the police about what you saw; is
2 that correct?

3 A. Yes, sir.

4 Q. Do you remember what police officer talked to you?

5 A. Mr. Johnson and uh, I don't know the other fellow,
6 but they put me in the car, and I showed them, you know,
7 which way that I went and where the fellow was running at and
8 where he come out and everything.

9 Q. Now the first time you talked to Mr. Johnson, what
10 did you tell him? Oh, strike that.

11 A. The first time I talked to him?

12 Q. Yes.

13 A. I told him about the fellow that I, you know, that
14 I seen running and where I was going and how tall he was and
15 everything.

16 Q. Did you tell him his skin color? Did you tell
17 Mr. Johnson the guy's skin color?

18 A. That's right.

19 Q. And you told him his clothing, what he was wearing?

20 A. The clothes and the cap he wore too.

21 Q. Okay. And he took you back home the first time;
22 right?

23 A. Right.

24 Q. And you went and talked to Mr. Johnson again; is
25 that right?

26 A. Well, he called me back up there. When I talked to
27 him the first time, he never did take nothing down. Then
28 after Clemmie Fleming went up there, then he called me back,
29 and he was wanting me -- he asked me was Clemmie with me the

Roy Harris - DIRECT

1 second time, and I told him yeah. And he asked me did we see
2 anybody running? And I told him no, she wasn't with me when
3 I seen the fellow running. She wasn't with me period.

4 Q. Okay. What else happened that second time? Was
5 anybody else there with you and Mr. Johnson the second time?

6 A. No, sir.

7 Q. Okay. And what did Mr. Johnson, if anything, ask
8 you to do at the second interview that you didn't do in the
9 first time one?

10 A. Well, he was wanting me to witness to what Clemmie
11 Fleming said, and I kept telling him that she wasn't with me.
12 And he kept going in and out of the office, and when he come
13 back in, he got me mad. And I just said, I can't hear good.
14 And he said Clemmie Fleming said something about, she said
15 that was Curtis Flowers running, which we didn't see nothing.
16 And then I was so mad and upset, I just said, well, I said
17 she might have said something like that. Now I told that in
18 the Tupelo court, but I said then I wasn't going to tell a
19 lie twice.

20 BY MR. CARTER: Okay. One moment. I think I'm
21 finished.

22 (Defense Counsel confer.)

23 BY MR. CARTER:

24 Q. Mr. Harris, Mr. Johnson also showed you a picture;
25 is that correct?

26 A. That's right.

27 Q. And what did you tell Mr. Johnson when he showed
28 you the picture?

29 A. I told him that wasn't the man that I seen running.

Roy Harris - CROSS

1 BY MR. CARTER: Okay. We tender.

2 CROSS-EXAMINATION BY MR. EVANS:

3 Q. Morning, Mr. Harris.

4 A. (Witness nods his head.)

5 Q. As a matter of fact, you have given statements
6 about four or five times, haven't you?

7 A. Come--

8 Q. You can hear me.

9 A. I can't hear you.

10 Q. You can hear me, can't you, Mr. Harris?

11 A. You are a little bit too far off. See, you are not
12 speaking loud enough--

13 Q. (Loudly) You have given statements about four
14 times in this case, haven't you?

15 A. Uh-huh.

16 Q. Can you hear me now?

17 A. Sir?

18 Q. Can you hear me now?

19 A. I don't understand you.

20 Q. Can you hear me?

21 A. I don't quite understand.

22 Q. You didn't have any problem hearing the Defendant's
23 attorney, did you?

24 A. Talking about have I ever seen him before?

25 Q. You understand what I'm saying.

26 A. No, sir. I ain't never seen him before.

27 Q. How come you could understand him, but you can't
28 understand me?

29 BY MR. CARTER: Your Honor, I object. This is

Roy Harris - CROSS

1 badgering the witness--

2 BY THE WITNESS: --I don't understand what he is
3 talking about--

4 BY MR. CARTER: -- Why doesn't he just walk
5 closer to the witness and make sure the man can hear
6 him rather than sitting back there playing these
7 games.

8 BY MR. EVANS: Your Honor, if this witness can't
9 hear what I'm saying and he could hear what the
10 Defense Counsel was saying, something is wrong.

11 BY THE COURT: Well, ask him a question.

12 BY THE WITNESS:

13 A. I ain't got nothing to hide. I done told it like
14 it was, and that's it.

15 Q. You have given about four statements in this case,
16 haven't you?

17 A. Four statements?

18 Q. And every statement you have given you say that
19 Clemmie Fleming, when y'all were driving on Church Street,
20 said, "There goes Curtis Flowers," didn't you?

21 A. No, sir. Nothing like that.

22 BY MR. EVANS: Your Honor, may I have this item
23 marked for identification?

24 BY THE COURT: Yes.

25 (STATEMENT OF ROY HARRIS WAS MARKED AS STATE'S
26 EXHIBIT S-124 FOR IDENTIFICATION.)

27 BY MR. EVANS:

28 Q. Do you remember giving John Johnson a statement?

29 A. Sure.

Roy Harris - CROSS

1 Q. Do you remember telling him that you were taking
2 Clemmie to pay a furniture bill?

3 A. That's right.

4 Q. Do you remember being asked, "Well, over there on
5 Church Street, was anything mentioned; did anybody call
6 somebody's name?"

7 A. Come again now.

8 Q. Do you remember being asked when you and Clemmie
9 were over on Church Street, "Did anybody call somebody's
10 name?"

11 A. Yeah. I remember that.

12 Q. Do you remember answering, "She said something
13 about, There goes Curtis Flowers"?

14 A. That's what Clemmie Fleming said.

15 Q. That's exactly what I'm asking you. And that's
16 what you have said in four different statements, haven't you?

17 A. (Very softly) One.

18 Q. Do you remember in another statement going further
19 and saying, "And I started to pick him up. I said, I don't
20 believe I know him, and Clemmie says, I know him. So I
21 didn't pay too much attention to him"?

22 A. I said I didn't know him, and I kept going.

23 Q. So now you are admitting to this jury that when
24 Clemmie was with you, y'all passed somebody running. She
25 said, "There goes Curtis Flowers," and you didn't know him, so
26 you didn't pick him up?

27 A. I said that because Mr. Johnson kept pushing me and
28 made me mad. And I didn't want to go along with nothing
29 Clemmie Fleming said because she wasn't with me --

Roy Harris - CROSS

1 Q. --Mr. Johnson--

2 A. -- and when she was with me, we didn't see no one
3 running.

4 Q. Mr. Johnson wasn't even present when you made this
5 statement, was he? Look at that.

6 A. I can't read.

7 Q. Mr. Johnson was only present one of the times you
8 even said that; isn't that right?

9 A. The time Mr. Johnson, the only time I told that to
10 Mr. Johnson when, over there, over there where the old police
11 station used to be at. That's the onliest time I told that
12 to Mr. Johnson, and then I told it once in Tupelo court.

13 Q. And this--

14 A. --And when we got down here now, I didn't tell it
15 down there because I knowed it was wrong.

16 Q. You have told the same thing every time you have
17 testified, haven't you?

18 A. What's that?

19 Q. Every time you have given a statement you have told
20 the same thing, haven't you?

21 A. Not in Tupelo, I didn't -- I told it in Tupelo, but
22 I didn't tell it down yonder in Hattiesburg.

23 Q. Didn't you--

24 A. --I meant down there--

25 Q. --also say, and when y'all were coming up on 51,
26 "The same fellow that I seen running in front of the road was
27 coming down Silver Street"--

28 BY MR. CARTER: --Your Honor, I would like to
29 interpose--

Roy Harris - CROSS

1 BY THE WITNESS: --no, sir.

2 BY MR. CARTER: --an objection for the record.

3 This man has testified that he talked to Mr. Johnson
4 twice, that on the first time--

5 BY MR. EVANS: -- Your Honor, I object to him
6 trying to tell the Defendant how many times he talked
7 to him--

8 BY MR. CARTER: -- I'm trying to make an
9 objection and state my reason for it.

10 BY MR. EVANS: And I object to it being done in
11 front of this witness.

12 BY THE COURT: I'm not sure he can hear him.
13 (Laughter)

14 BY MR. EVANS: He can if he wants to.

15 BY MR. CARTER: You are not a doctor, Doug. Your
16 Honor, I object. Mr. Harris has testified. He has
17 testified that he talked to Mr. Johnson twice. He has
18 testified to what he told him the first time. He has
19 testified what he told him the second time and which
20 is a change in statement, and Mr. Evans knows it. And
21 it is improper for Mr. Evans to scream at the man, to
22 run up and badger the man over statements that the man
23 has already admitted that he told one story one time
24 and he told another one the other time, and he
25 corrected it.

26 BY THE COURT: Well, Mr. Carter, one, he is on
27 cross-examination. Two, when you were standing back
28 at that podium, he heard every word you say. Now he
29 won't, now he says he can't hear Mr. Evans, so Mr.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1771-1920

VOLUME 20 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Roy Harris - CROSS

1 Evans had to move up in order to do that, and he had
2 to speak louder in order for this man to respond,
3 according to the own witness. So the objection is not
4 well taken. It's overruled.

5 BY MR. EVANS: May I--

6 BY THE COURT: -- Do not argue with him though or
7 badger him, Mr. Evans.

8 BY MR. EVANS: Yes, sir. May I proceed, Your
9 Honor?

10 BY THE COURT: Yes.

11 BY MR. EVANS:

12 Q. Do you remember further saying that after y'all saw
13 the person the second time up around 51, that you took
14 Clemmie over to her mother's house?

15 A. No, sir. I didn't say nothing like that.

16 Q. You can't read; is that right?

17 A. That's right.

18 Q. Mr. Harris, I want to make sure I understand you.

19 You are admitting that on at least two different occasions,
20 one that Mr. Johnson was there and one that he was not there,
21 that you have given statements that as y'all were going down
22 Church Street, Clemmie Fleming said, "There goes Curtis
23 Flowers"; is that right?

24 A. That's what Clemmie Fleming said. But I didn't
25 witness to it. All I, I got out of the office because he had
26 made me mad, and I didn't want to witness. He didn't want to
27 hear what I had to say, but he wanted me to witness to what
28 Clemmie Fleming said.

29 Q. At a hearing did you not say that under oath?

FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

Roy Harris - CROSS - REDIRECT

1 A. What's that now?

2 Q. At a hearing did you not say that under oath?

3 A. (Very softly) I don't know where that at.

4 Q. You know what I'm talking about, don't you?

5 A. (Witness shakes his head.)

6 Q. Have you ever taken an oath to tell the truth and
7 said that Clemmie Fleming said, "There goes Curtis Flowers"?

8 A. I say I thought she said something like that. I
9 didn't say she said, "There goes Curtis Flowers."

10 BY MR. EVANS: Your Honor, I don't have any
11 further questions of this witness.

12 BY THE WITNESS:

13 A. Because I didn't have no hearing aid on or nothing
14 like that, and if Mr. Johnson, if -- how come I had to
15 hitchhike back home?

16 BY THE COURT: Mr. Carter.

17 (Defense Counsel confer.)

18 REDIRECT EXAMINATION BY MR. CARTER:

19 Q. Mr. Harris, you did not see Curtis Flowers running;
20 is that correct?

21 A. No, sir. I sure haven't.

22 Q. This is Curtis Flowers right here. You did not see
23 this man running; is that correct?

24 A. (Witness shakes his head.) Well, I can say one
25 thing.

26 BY MR. EVANS: Your Honor, I would ask --

27 BY THE WITNESS: --if it was Mr. Flowers--

28 BY MR. EVANS: --that he be responsive to the
29 questions.

Mike McSparrin - DIRECT

1 BY MR. CARTER: Stop.

2 BY THE COURT: He needs to answer your question.
3 Then he can explain it.

4 BY MR. CARTER: One moment.

5 (Defense Counsel confer.)

6 BY MR. CARTER: No further questions, Your Honor.
7 You can go, Mr. Harris.

8 BY THE COURT: You are free to go, Mr. Harris.

9 BY THE WITNESS: I can go?

10 BY THE COURT: Yes, sir.

11 WITNESS EXCUSED.

12 BY THE COURT: Who will you have next?

13 BY MR. CARTER: Mike McSparrin. Oh, one minute.
14 I have one more before him if she is here.

15 (Mr. Carter leaves the courtroom briefly and
16 returns.)

17 BY MR. CARTER: Mike McSparrin, Your Honor.

18 MIKE MCSPARRIN,
19 a white male called to testify as a witness by the Defendant,
20 having first been duly sworn, testified as follows, to-wit:

21 BY THE COURT: Have a seat up here, sir. State
22 your name.

23 BY THE WITNESS: Mike McSparrin. That is spelled
24 M C S P A R R I N.

25 DIRECT EXAMINATION BY MR. CARTER:

26 Q. Okay, Mr. McSparrin, where do you work presently?

27 A. I work for the Criminal Information Center,
28 Department of Public Safety.

29 Q. And where did you work in 1996?

Mike McSparrin - DIRECT

1 A. In 1996, I was employed by the Mississippi State
2 Crime Laboratory.

3 Q. In what capacity?

4 A. I was a certified latent print examiner.

5 Q. Fingerprint examiner; is that the same thing?

6 A. Yes.

7 Q. Now could you tell us something about your
8 educational background?

9 BY MR. EVANS: Your Honor, I will stipulate that
10 he is an expert in the field of fingerprints.

11 BY MR. CARTER: Okay.

12 BY THE COURT: I accept him as an expert in that
13 field.

14 BY MR. CARTER:

15 Q. Did you have the occasion to do some work on a case
16 involving the State of Mississippi versus Curtis Flowers?

17 A. Yes, I did.

18 Q. Can you tell us what you were asked to do and what
19 you did?

20 A. Well, as a latent print examiner, there was some
21 evidence from the crime scene that I was asked to examine in
22 this particular case.

23 Q. Okay. Can you, do you have your file with you?

24 A. Yes, I do.

25 Q. Can you be more specific in terms of what you were
26 asked to do and what you did?

27 BY THE WITNESS: Your Honor, if I could go to my
28 notes?

29 BY THE COURT: Yes.

Mike McSparrin - DIRECT

BY THE WITNESS:

A. Specifically, I was asked to look at some latent lifts that came from a crime scene, and I was also asked to process some evidence, some casings, and a shoe box and a bank bag and a bank receipt book.

Q. And did you find any fingerprints or any evidence that connected Mr. Flowers to this crime?

A. No.

BY MR. CARTER: One moment.

(Defense Counsel confer.)

Q. Could you tell the jury what it is you do to determine -- when you get lifts that come to you, do you know whether or not they are already prints that -- explain what it is you get or receive?

A. Well, in this particular case, I received some lifts that were taken at the scene by crime scene investigator. These lifts were submitted to me. I evaluate them to see if there is any fingerprints, latent prints of value on these lifts, and once I make this determination, I label them, number them.

Q. Did you find any latent prints of value?

A. On the lifts from the crime scene, yes, I did. There were six. I labeled them L-1 through L-6.

Q. Okay, and you got latent prints of value, I believe, from a shoe box too; is that correct?

A. Yes, I did. I processed -- the shoe box was submitted as a piece of evidence, and I processed that shoe box to see if I could develop some latent prints on that shoe box.

Mike McSparrin - DIRECT

1 Q. And did you also receive some known prints?

2 A. Yes, I did.

3 Q. -- that were used for comparison?

4 A. Yes, I did.

5 Q. Whose prints were those? Well, strike that. Did

6 you receive known prints from the Defendant?

7 A. Curtis Flowers?

8 Q. Yes.

9 A. Yes, I did.

10 Q. And you were able to take the known prints versus
11 the unknown prints you had and make some comparisons; is that
12 correct?

13 A. I did conduct a comparison between the two; yes, I
14 did.

15 Q. Okay, and you didn't find Mr. Flowers' prints on
16 anything that you examined; is that correct?

17 A. There was -- no identification was effected.

18 Q. Okay. One moment.

19 (Defense Counsel confer.)

20 Q. Now is it true that with respect to individuals,
21 that we all have or supposedly have different, I guess, or
22 unique prints; is that correct?

23 A. That is correct. No two individuals ever have been
24 found to have the same fingerprints. That is correct.

25 Q. And when you are looking at fingerprints, you
26 examine the starts, stops and the dots within the, I guess a
27 person's fingers or hands?

28 A. The identification characteristics located on the
29 friction ridge skin of an individual's hands or on the bottom

Mike McSparrin - DIRECT - CROSS

1 of their feet.

2 Q. Or on the bottom of their feet. Now with respect
3 to a shoe box like that, is that a good object to contain
4 fingerprints?

5 A. That was an excellent piece of evidence, yes.

6 Q. Now how long does prints last? Is there any life
7 of, as far as you know, of a print?

8 A. Scientifically, there is no way to age a latent
9 print that can be left on a surface.

10 BY MR. CARTER: We tender.

11 CROSS-EXAMINATION BY MR. EVANS:

12 Q. Good morning, Mr. McSparrin.

13 A. Good morning.

14 Q. Have you been advised of what type of business this
15 was?

16 A. Where the crime scene took place?

17 Q. Yes, sir.

18 A. Other than just in my notes, a furniture store to
19 my knowledge.

20 Q. Okay. And is that the type of place you would
21 expect a lot of people to come in and handle things?

22 A. Retail, I would expect a lot of people to come in
23 if they are shopping, yes.

24 Q. Have you also been advised that the Defendant was
25 an employee there?

26 A. Yes.

27 Q. So you would expect his prints to have been in the
28 store somewhere anyway, wouldn't you?

29 A. He has legitimate access to the facility, yes.

Mike McSparrin - CROSS

1 Q. Just like the victims in this case?

2 A. Yes.

3 Q. Now were the officers' prints that handled the shoe
4 box submitted to you?

5 A. No, they were not.

6 Q. Okay, so you don't know if the few prints that you
7 got off of there were the officers or not?

8 A. No, I do not.

9 Q. Now where you have got a business and an employee
10 is the suspect, do prints make much difference to you if you
11 find prints in an open place?

12 A. It depends on the circumstances. If let's say you
13 found prints in blood, yes, that could have a bearing. Yes,
14 it could.

15 Q. Okay, but just on the counter, things like that?

16 A. If they have legitimate access, they could have
17 handled it at any time.

18 BY MR. EVANS: Nothing further, Your Honor.

19 BY MR. CARTER: One moment, Your Honor.

20 (Defense Counsel confer.)

21 BY MR. CARTER: No more questions.

22 BY THE COURT: All right, is he finally excused?

23 BY MR. CARTER: Yes.

24 BY THE COURT: You are free to go, sir.

25 BY THE WITNESS: Thank you.

26 WITNESS EXCUSED.

27 BY THE COURT: Who do you have next?

28 BY MR. CARTER: Let me see, Your Honor, if this
29 other person showed up.

Bench Conference

1 (Mr. Carter leaves the courtroom briefly and
2 returns.)

3 BY MR. CARTER: Your Honor, one second.

4 (Defense Counsel confer followed by CONFERENCE AT
5 THE BENCH OUT OF THE HEARING OF THE JURY AS FOLLOWS:)

6 BY MR. CARTER: Well, Your Honor, I'm scared, I'm
7 reluctant to say this because you have asked us have
8 we wanted you to force people to be here and we said
9 no. We have another witness named Stacy Wright who is
10 a student at Ole Miss. And apparently she is not
11 here, and we don't know if she is on her way or what
12 the situation is. I was wondering if the Court could
13 give us five minutes or ten minutes just to call and
14 see where she is. And if she is not here in a small
15 amount of time, we will just have to forget about it
16 even though we want her.

17 BY THE COURT: Okay, I'm going to take a short
18 break to let you do that, but I want the record to
19 reflect that her name was mentioned to me yesterday.
20 I asked if she had been subpoenaed, and she was
21 subpoenaed and served. My understanding is - correct
22 me if I'm wrong, Mr. Carter - but you released her; is
23 that right?

24 BY MR. CARTER: No. Well, she never actually
25 showed up in the first place and we--

26 BY THE COURT: Did you bring that to the Court's
27 attention?

28 BY MR. CARTER: No, sir. I didn't.

29 BY THE COURT: The Defense announced ready at the

Randy Keenum - DIRECT

1 beginning of this trial. That means that they are
2 responsible for their witnesses. As of yesterday, I
3 knew about this witness, knew she had been subpoenaed,
4 and offered to issue an attachment for that witness.
5 The Defense declined that offer, and with the
6 understanding that she would be here today. I will
7 give you the five or ten minutes to find out what the
8 situation is, but if she is not on the way or -- well,
9 I will wait to evaluate it when you tell me what the
10 deal is, but we have got to go forward. Okay?

11 BY MR. CARTER: Yes, sir.

12 END BENCH CONFERENCE.

13 BY THE COURT: We will take a short break, ladies
14 and gentlemen.

15 (FOLLOWING A TWENTY MINUTE RECESS, THE TRIAL
16 RESUMED IN OPEN COURT WITH ALL COUNSEL, THE DEFENDANT, AND
17 THE JURY PRESENT:)

18 BY THE COURT: Who will you have next?

19 BY MR. CARTER: Your Honor, we rest.

20 DEFENDANT RESTS.

21 BY THE COURT: Okay. Rebuttal?

22 BY MR. EVANS: Randy Keenum will be first, Your
23 Honor.

24 RANDY KEENUM,

25 a white male called to testify as a witness by the State of
26 Mississippi IN REBUTTAL, having first been duly sworn,
27 testified as follows, to-wit:

28 BY THE COURT: State your name, please.

29 BY THE WITNESS: Randy Keenum.

Randy Keenum - DIRECT

1 BY THE COURT REPORTER: Spell your last name.

2 BY MR. EVANS: Good morning--

3 BY THE COURT: --Wait just a second. She needs
4 him to spell it.

5 BY THE WITNESS: K E E N U N.

6 DIRECT EXAMINATION BY MR. EVANS:

7 Q. Good morning, Mr. Keenum.

8 A. Good morning.

9 Q. Mr. Keenum, where do you work?

10 A. At this time I work for Bennett's Transport.

11 Q. I want to direct your attention back to July of
12 1996, and I will ask you where you worked at that time?

13 A. For Angelica.

14 Q. For Angelica?

15 A. Yes, sir.

16 Q. If you would, speak up just a little bit.

17 A. All right.

18 Q. What hours did you work there?

19 A. Oh, I opened the plant up about 6:30 until 3
20 o'clock in the afternoon.

21 Q. I want to direct your attention specifically to the
22 day of the murders at Tardy Furniture. Do you remember that
23 day?

24 A. Yes, sir.

25 Q. Do you know a person by the name of Doyle Simpson?

26 A. Yes, sir.

27 Q. Can you tell the ladies and gentlemen of the jury
28 where he was from say 9:20 that morning until 10:20 that
29 morning?

Randy Keenum - DIRECT - CROSS

1 A. Yes, sir. We always took break at 9:20. The plant
2 had two breaks. We weren't on production, so we usually took
3 more than one. So we usually took break from about 9:20
4 until a quarter to 10:00. And then we would go back to work.

5 Q. Okay. And that particular morning, do you know
6 where Doyle Simpson was from 9:20 until say 10:20?

7 A. Yes, sir. He was there at the plant.

8 Q. He was at Angelica?

9 A. Yes, sir.

10 BY MR. EVANS: Nothing further, Your Honor.

11 CROSS-EXAMINATION BY MR. CARTER:

12 Q. Mr. Keenum, had you given Mr. Evans or Mr. Johnson
13 or anybody a statement before regarding your testimony today?

14 A. No, not a statement. I have talked to them, you
15 know, whenever all this happened, but not really a statement.

16 Q. Okay, when did you talk to them?

17 A. Oh, after the murders.

18 Q. When after the murders?

19 A. The day, I don't know. You know, it was several
20 days after it.

21 Q. Now who did you give the statement to?

22 A. I talked to John.

23 Q. John Johnson?

24 A. Johnson.

25 Q. Did John Johnson have a tape recorder running?

26 A. No.

27 Q. Did he make any notes?

28 A. I don't know.

29 Q. What do you do at Angelica? What did you do at

Randy Keenum - CROSS

Angelica?

1 A. Maintenance. I was in the maintenance end of it.

2 Q. You was in the maintenance area?

3 A. Uh-hum.

4 Q. And tell me what you did all that day?

5 A. All that day?

6 Q. All that day. How long did you work? What was
7 your hours that day?

8 A. From 6:30 to 3 o'clock.

9 Q. What did you do at 6:30 when you got there?

10 A. I opened the door, went in, turned on the lights,
11 cranked up the air compressors, the boiler, the vacuum.

12 Q. Okay, that is something you routinely do? Is
13 that--

14 A. -- every day.

15 Q. What did you do after you did that on that
16 particular day?

17 A. Usually I would get a Mountain Dew and drink it
18 every morning.

19 Q. Did you get a Mountain Dew that day?

20 A. Oh, I am sure I did.

21 Q. Okay. And what did you do after the Mountain Dew?

22 A. If there was any machines left over, you know, from
23 the day before that were broke, I would go out and start
24 fixing on those.

25 Q. Okay, how many machines were left open that day?

26 A. I don't know exactly. Usually we tried to get them
27 all, but sometimes it would be two or three.

28 Q. How many machines did you fix that day?

Randy Keenum - CROSS

1 A. Oh, I can't tell you that.

2 Q. What did you do after possibly looking at the
3 machines?

4 A. By that time the ladies was there. We went to
5 work. You know, they went to work. The supervisors come up,
6 rolled up the machines, and we, you know -- myself and
7 Reverend Johnny Butts and Kenny Johnson, you know, we worked
8 on the sewing machines.

9 Q. On the sewing machines?

10 A. Yeah, it was a sewing factory.

11 Q. Is that what you did almost every day?

12 A. No, that's what I did every day. That was my job,
13 you know.

14 Q. What did Doyle Simpson have on that day?

15 A. I don't know. I can't tell you that. I don't have
16 a clue. But I know we sat there and ate, you know.

17 Q. What did he eat?

18 A. What did he eat?

19 Q. Yes.

20 A. I don't know. His mother always fixed him a plate.
21 I don't, you know, I don't know. I probably, more than
22 likely, I would more than likely eat like a pop tart or
23 something like that, and Doyle always had a meal. You know,
24 it's a home cooked meal. You know, this is not something we
25 did occasionally. We took break together every day. I mean
26 you know, we took a break in the shop. We didn't go up there
27 where the ladies was. We had our own little refrigerator and
28 our own microwave in the shop. We would come in; we would
29 sit down; and we would eat, take break, laugh, joke,

Randy Keenum - CROSS

1 whatever. And the ladies would go back to work. Well, you
2 know, we didn't have to because we weren't fighting
3 production, so we would sit back there and have a good time
4 more or less.

5 Q. How long did y'all break that day?

6 A. The break started at 9:20 because we had a buzzer
7 that went off. And we was probably quarter to 10:00 or so.
8 We went back and I went to work, and Doyle went back to
9 sweeping floors. I know that because I saw him sweeping the
10 floor.

11 Q. Now do you read and write?

12 A. Yes.

13 Q. Did Mr. Johnson ask you to write out a statement
14 about what you saw?

15 A. No.

16 Q. Did he even ask you if you could read and write?

17 A. No. I assumed that he knew I could read and write.
18 I don't know. I meant -- I will be glad to tell him now if
19 you need me to.

20 BY MR. CARTER: One minute.

21 (Defense Counsel confer.)

22 Q. Mr. Keenum, where did you talk to John Johnson at?
23 Where were you?

24 A. I believe I come and met him at the police
25 department here in town, which it was over by Oliver's
26 Funeral Home at that time.

27 Q. Are you sure?

28 A. I am pretty well positive.

29 Q. How long were you there?

Randy Keenum - CROSS

1 A. I don't know that. John and I have been friends a
2 long time. I imagine we -- you know, I don't know; we just
3 talked.

4 Q. He is your friend? Okay, what did you have on that
5 day that you gave that statement to Mr. Johnson? You don't
6 remember?

7 A. I am sure it was Levi blue jeans because that's all
8 I ever wear, but other than that, I can't tell you about it.

9 Q. Okay. What exactly did Mr. Johnson ask you?

10 A. Exactly? Seems like it was did I remember Doyle
11 being at the plant.

12 Q. Okay.

13 A. I told him yeah -- yeah, that we took break
14 together.

15 Q. Okay, how long did you break that day?

16 A. The same. It was probably, it was about like from
17 9:20 -- like I say, we had a buzzer that went off. I was
18 always in the shop at 9:20, take a break and eat and sit
19 there and laugh and all. If a truck driver or something come
20 in, probably a quarter to 10:00 or maybe ten minutes to
21 10:00, something like that, I probably got up and went back
22 out there and went to work. I was riding the clock. You
23 know, I'm not going to sit here and tell you no lie.

24 Q. So you have to -- when you take your break, you
25 clock out?

26 A. No.

27 Q. How long are your breaks?

28 A. Ten minutes is what the ladies got. They got from
29 9:20 to 9:30. It was like half of the plant got that, you

Randy Keenum - CROSS

1 know. Okay, this half went back to work. The buzzer went
2 off, you know. This bunch here come in, and they got ten
3 minutes off.

4 Q. So the breaks are normally ten minutes for
5 everybody?

6 A. Right. The ladies were on production. You know,
7 they didn't want to be off over ten minutes because--

8 Q. -- What about Doyle?

9 A. Oh, no, Doyle was like us. He was working by the
10 hour.

11 Q. Okay, so y'all didn't have no--

12 A. (Witness shakes his head.)

13 Q. Did y'all clock in? Did you have to clock in when
14 you get there in morning?

15 A. Yeah, well, we wrote it in. We didn't punch a
16 clock.

17 Q. Okay, but you wrote it in so that they would know
18 that you were there?

19 A. Right. Yes, on a time clock, sure did.

20 BY MR. CARTER: One moment. I think I'm
21 finished.

22 (Defense Counsel confer.)

23 BY MR. CARTER: No further questions, Your Honor.

24 BY MR. EVANS: Nothing further, Your Honor. We
25 would ask that he be released.

26 BY THE COURT: You are free to go.

27 BY THE WITNESS: Thank you, sir.

28 WITNESS EXCUSED.

29 BY MR. EVANS: Jack Matthews.

Jack Matthews - DIRECT

1 JACK MATTHEWS,

2 a white male recalled to testify by the State of Mississippi,
3 this time in REBUTTAL, having been previously sworn,
4 testified again as follows, to-wit:

5 BY THE COURT: State your name, please, sir.

6 BY THE WITNESS: Jack Matthews.

7 DIRECT EXAMINATION BY MR. EVANS:

8 Q. For the record, you are the same Jack Matthews that
9 has previously testified in this case; is that correct?

10 A. Yes, sir.

11 Q. Mr. Matthews, you have testified earlier that the
12 shoes you took off of the Defendant Curtis Flowers were size
13 10 1/2; is that correct?

14 A. Yes, sir.

15 Q. Do you have those shoes here with you today?

16 A. Yes, sir. I do.

17 Q. Would you produce them, please.

18 A. (Witness complies.)

19 BY MR. EVANS: Your Honor, may I have this
20 exhibit marked for identification?

21 BY THE COURT: Yes.

22 (SACK CONTAINING NIKE TENNIS SHOES WAS MARKED AS
23 STATE'S EXHIBIT S-125 FOR IDENTIFICATION, and they were shown
24 to Defense Counsel.)

25 BY MR. EVANS:

26 Q. Mr. Matthews, Exhibit 125, is this the shoes that
27 you took from the Defendant that showed they were size ten
28 and a half's?

29 A. Yes, sir.

Jack Matthews - DIRECT

1 **BY MR. EVANS:** Your Honor, I offer this Exhibit
2 125 into evidence.

3 **BY MR. CARTER:** Your Honor, we object. We didn't
4 see any size on them.

5 **BY THE WITNESS:** I will show you.

6 **BY MR. EVANS:** We will cover that in a minute,
7 but at this point I am offering them into evidence
8 because they are the shoes he took from him--

9 **BY MR. CARTER:** -- No objection other than that.

10 **BY THE COURT:** Okay. That objection is
11 overruled. Let them be admitted.

12 (SACK CONTAINING NIKE SHOES PREVIOUSLY MARKED AS
13 STATE'S EXHIBIT S-125 FOR IDENTIFICATION WAS NOW RECEIVED IN
14 EVIDENCE.)

15 BY MR. EVANS:

16 Q. I will hand you Exhibit 125 back, and I will ask
17 you if these shoes have the size marked in them?

18 A. Yes, sir. They do.

19 Q. Would you pull one of them out so that you can show
20 the jury what the size is in the shoe.

21 **BY MR. EVANS:** May the witness step down, Your
22 Honor?

23 **BY THE COURT:** Yes.

24 BY MR. EVANS:

25 Q. If you would, show the jury where the size is and
26 what the size in that shoe is.

27 A. Okay. You have got a tag right down here in the
28 shoe.

29 Q. You can step up closer to the jury box if you would

Jack Matthews - DIRECT

1 like to.

2 A. You have this tag right here in the shoe, and it
3 shows 10.5, which means 10 1/2 US shoe.

4 Q. If you would, before we pass it, walk down to where
5 the other jurors can see where you are pointing to.

6 A. (Witness complies.) Both shoes have this tag in
7 them.

8 Q. All right.

9 BY MR. CARTER: Let me see it.

10 BY MR. EVANS: May I pass this exhibit to the
11 jury, Your Honor?

12 BY THE COURT: It has been admitted. You can.
13 Has it been marked?

14 BY MR. EVANS: The composite exhibit has been
15 marked, the bag with the two shoes in it. I am just
16 passing one of the shoes that was in the exhibit
17 instead of passing the whole bag, with the Court's
18 approval.

19 BY THE COURT: Why don't we mark those exhibits
20 the way we did those others.

21 BY MR. EVANS: All right, sir.

22 BY THE COURT: As S--

23 BY MR. EVANS: As A and B?

24 BY THE COURT: A and B, yeah.

25 (LEFT NIKE TENNIS SHOE WAS MARKED AS STATE'S
26 EXHIBIT S-125A AND THE RIGHT SHOE AS S-125B, BOTH IN
27 EVIDENCE.)

28 BY MR. EVANS: All right, Your Honor, Exhibit
29 125A, I will pass to the jury.

Jack Matthews - CROSS - REDIRECT

1 **BY THE COURT:** Okay.

2 **BY MR. EVANS:** And I will tender this witness.

3 CROSS-EXAMINATION BY MR. CARTER:

4 Q. Mr. Matthews, where did you obtain those shoes from
5 Mr. Flowers? Where were you when you obtained them?

6 A. At the Winona Police Department.

7 Q. Are those the only ones you obtained?

8 A. I believe we obtained another pair from his
9 residence.

10 Q. Okay. Now you are saying that you got a pair of
11 ten and a half shoes from Mr. Flowers. But can you also say
12 that you know for a fact that Mr. Flowers didn't have or
13 purchase any shoes that were size 11 also? Are you saying--

14 A. -- The only shoes I know anything about are the
15 ones that we got off his feet here.

16 Q. Okay, so it could--

17 A. --these shoes that day.

18 Q. With that being the case, he could also have some
19 11's; isn't that correct?

20 A. I'm sure it's possible.

21 **BY MR. CARTER:** No further questions.

22 REDIRECT EXAMINATION BY MR. EVANS:

23 Q. The shoes that you took off of his feet were size
24 ten and a half; is that correct?

25 A. Yes, sir.

26 **BY MR. EVANS:** Further nothing of this witness,
27 Your Honor.

28 **BY THE COURT:** Is he finally excused?

29 **BY MR. EVANS:** Yes, sir.

Bill Thornburg - DIRECT

WITNESS EXCUSED.

BY THE COURT: All right. Who do you have next?

BY MR. EVANS: Sheriff Bill Thornburg.

BILL THORNBURG,

a white male called to testify again as a witness by the State of Mississippi, this time in REBUTTAL, having been previously sworn, testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Bill Thornburg.

BY MR. EVANS: May I proceed, Your Honor?

BY THE COURT: Yes.

DIRECT EXAMINATION BY MR. EVANS:

Q. Sheriff, you are the same Sheriff Bill Thornburg that has testified earlier in this case; is that correct?

A. Yes, sir.

Q. Sheriff, when you recovered Exhibit 79A -- well, first, before you recovered it, when you first saw Exhibit 79A, where was it?

A. It was in the back bedroom of the apartments in a chest of drawer that had nothing in it but the shoe box.

Q. Was anything in the shoe box?

A. It was not.

Q. So nothing was being stored in this box when you first found it?

A. No, sir.

Q. Sheriff, during your investigation, did you have an occasion to see and observe at different times the vehicle that was owned by Doyle Simpson?

A. Yes, sir. I did.

Bill Thornburg - DIRECT

1 Q. What is the color of that car?

2 A. It's a kind of a copper brown, solid color.

3 Q. Is it -- solid color. It does not have any
4 stripes, dark or light on it, does it?

5 A. No, sir.

6 Q. Now Sheriff, if somebody testified it had a dark
7 stripe down the side of it, would that be correct?

8 A. No, sir.

9 BY MR. CARTER: I object, Your Honor. That is an
10 improper question.

11 BY THE COURT: Sustained.

12 BY MR. EVANS:

13 Q. Now the photograph 99A, I will ask you to look at
14 this photograph right here. Can you explain to the ladies
15 and gentlemen of the jury why this bottom part of that
16 photograph looks dark?

17 A. Could I?

18 Q. Yes, sir. You may step down.

19 A. (Witness steps down in front of large photograph on
20 board.) The reason it's looking dark there, it is kind of in
21 a shadow.

22 Q. Okay. But the car is solid color; is that correct?

23 A. Yes, sir.

24 Q. You may have a seat.

25 A. (Witness resumes witness stand.)

26 BY MR. EVANS: Tender the witness, Your Honor.

27 BY MR. CARTER: Yes, sir.

28 CROSS-EXAMINATION BY MR. CARTER:

29 Q. Sheriff Thornburg.

Bill Thornburg - CROSS

1 A. Yes, sir.

2 Q. So you are telling me the good Lord cast a shadow
3 nowhere but down to the side of this car? It's nowhere else
4 in this picture. The good Lord, the Almighty cast a shadow
5 right across here and nowhere else on the car?

6 A. I don't know whether the good Lord cast it or not,
7 but it's a shadow.

8 Q. Don't we see -- isn't it a fact that we see one
9 color here?

10 A. I see it. Yes, sir.

11 Q. And does it appear that there is a darker color
12 underneath here?

13 A. It's just a shadow. Yes, sir.

14 Q. So the shadow is from the rear right here; is that
15 correct?

16 A. (No immediate response.)

17 Q. Apparently the shadow is here?

18 A. Yes, sir. It's from the rear all the way up there.

19 BY MR. CARTER: One moment, Your Honor.

20 (Defense Counsel confer.)

21 BY THE BAILIFF: Judge Morgan, the jury wants to
22 know if that picture can be brought around because
23 they can't see it. There is a glare on it, and they
24 can't see--

25 BY THE COURT: --I can't hear you. What?

26 BY THE BAILIFF: The jury wants to know if that
27 picture can be brought around. There is a glare, and
28 they can't see what they are talking about on that
29 picture.

Bill Thornburg - CROSS

1 (Picture on easel was turned a different way.)

2 BY THE COURT: Can you see it now?

3 (Jurors nod their heads.)

4 BY THE COURT: Okay.

5 BY MR. CARTER:

6 Q. Now Sheriff Thornburg, one of the wonderful things
7 about being a police officer and investigating a case is that
8 you want to make a record of what you find. That's why you
9 take photographs; isn't that correct?

10 A. Yes, sir.

11 Q. And as time passes, don't you agree that memories
12 will fade?

13 A. A lot of times they will; yes, sir.

14 Q. So isn't it a good idea to also make a written
15 statement to put in writing what you saw at a particular time
16 in order to avoid relying on memory. Wouldn't you agree with
17 that?

18 A. Possibility.

19 Q. Now did you make any writing, any record of what
20 was in that box in Connie's house when you saw it?

21 A. No, sir.

22 Q. And don't you agree that a record, a written record
23 would be more reliable than your eight year memory? A
24 written record that was made on the day that you went there
25 would be more reliable and more trustworthy than your eight
26 year memory?

27 A. Well, I distinctly remember that there was nothing
28 in the box, and there was nothing in the drawer with the box.

29 Q. Okay, you haven't told us that. Did you tell us

Bill Thornburg - CROSS - REDIRECT

1 that before?

2 A. I did.

3 Q. When? You told me that before?

4 A. I did when I was up here before.

5 Q. Maybe you did. I don't remember. When you got the
6 box, obtained the box, you didn't actually go back there and
7 get that box, did you?

8 A. Connie went back there and got it.

9 Q. So you don't know what was in that box when she
10 went back there and got it, do you?

11 A. There wasn't anything in it when she brought it up
12 there, and there was nothing in it when I first seen it
13 earlier.

14 Q. Okay, I can accept that. But when she went back
15 and got it by herself and you wasn't with her, you don't know
16 what was in that box, do you?

17 A. No. It wasn't anything in it when I seen it.

18 Q. Do you understand my question? Do I need to ask
19 you again?

20 A. I do. I understand.

21 BY MR. CARTER: One moment.

22 (Defense Counsel confer.)

23 BY MR. CARTER: We tender, Your Honor.

24 REDIRECT EXAMINATION BY MR. EVANS:

25 Q. All right, Sheriff, if you would, step down,
26 please. I will move this around in front of the jury.

27 A. (Witness steps down in front of the jury box.)

28 Q. Now you can come on around this way, Sheriff.
29 Would you point out -- you have been asked if the only place

Roy Harris - REDIRECT

1 in that picture with shadows. What is this under the car?

2 A. That's a shadow.

3 Q. Dark shadow; right?

4 A. Yes, sir.

5 Q. There is also a glare on part of that car; is that
6 correct?

7 A. It is.

8 Q. But the car itself, is it a solid color?

9 A. It is.

10 Q. And Sheriff, is your memory just as good today as
11 it was then as far as what was in that box?

12 A. Yes, sir.

13 Q. How many days before the box was actually given to
14 you did you find that shoe box in the chest of drawers at
15 Connie Moore's house?

16 A. It was probably a week, two weeks.

17 Q. Was anything in that box?

18 A. There was not.

19 BY MR. EVANS: That's all. Your Honor, we--

20 BY THE COURT: You are through with him?

21 BY MR. EVANS: Through with the witness.

22 BY MR. CARTER: Your Honor--

23 BY THE COURT: -- Is he finally excused?

24 BY MR. EVANS: Yes, sir.

25 BY MR. CARTER: No, Your Honor. We want to call
26 him on our rebuttal.

27 BY THE COURT: Stick around, Sheriff.

28 WITNESS LEAVES THE COURTROOM.

29 BY MR. EVANS: The State finally rests, Your

Bench Conference

1 Honor.

2 STATE OF MISSISSIPPI RESTS ON REBUTTAL.

3 BY MR. CARTER: One minute. Can you give us a
4 minute, Your Honor? (Pause) Your Honor, may we
5 approach for a second?

6 (Ms. Ferraro enters the courtroom with an
7 envelope.)

8 BY MR. CARTER: Your Honor, give me one -- this
9 will answer the question of whether I need to talk to
10 anybody or not. (Mr. Carter gets out some
11 photographs.) We call Mr. Thornburg.

12 BY THE COURT: Well, you need to see me up here
13 first.

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
15 JURY AS FOLLOWS:)

16 BY THE COURT: There is normally no surrebuttal
17 in a case, and the only way it would be is if there is
18 new things brought up on rebuttal for you to
19 counteract. And he has just been on the stand subject
20 to cross-examination.

21 BY MR. CARTER: Well, Your Honor, we found some
22 new evidence to show that this car--

23 BY THE COURT: -- When did you find it?

24 BY MR. DE GRUY: The issue just came up when he
25 put him on the stand.

26 BY THE COURT: Sure. He has been on the stand.
27 You could have cross-examined him then.

28 BY MR. CARTER: I did--

29 BY THE COURT: -- When did you get this picture?

Bench Conference

1 BY MR. DE GRUY: They provided it in discovery.

2 BY THE COURT: Well, okay. So how long have you
3 had it?

4 BY MR. DE GRUY: This issue of the stripe did not
5 come up. He didn't testify that this was a shadow.

6 BY MR. CARTER: Until today.

7 BY MR. DE GRUY: Just now.

8 BY MR. EVANS: Your Honor, the issue of the
9 stripe came up in Tupelo. It's in the record in
10 Tupelo--

11 BY MR. CARTER: --We didn't have anything to do
12 with Tupelo.

13 BY MR. EVANS: As a matter of fact--

14 BY THE COURT: --Well, you did have something to
15 do with examining your discovery. You did have
16 something to do with cross-examining the man on
17 rebuttal. You did have something to do with doing it
18 when you are supposed to do it, and this is not new
19 evidence. This is things that have-- this testimony
20 was only on rebuttal to the testimony of the lady that
21 said she saw the vehicle and a description of the
22 picture. The picture has been in evidence. The jury
23 can interpret it, both of those things, and it's just
24 not new evidence.

25 BY MR. CARTER: Your Honor, just for the record,
26 and it may be just my personal opinion, but I want to
27 put it in the record. Mr. Thornburg, we believe, made
28 a statement that is obviously false. We have proof to
29 show that as far as, that we found the proof perhaps a

Bench Conference

1 couple of minutes after Mr. Thornburg left the witness
2 stand. I asked, I informed the Court that we wanted
3 to call Mr. Thornburg on surrebuttal so that I could
4 actually find the photograph. I realize that
5 procedurally--

6 **BY MR. DE GRUY:** We clearly did not release him.

7 **BY MR. CARTER:** I may be barred but in the
8 interest of justice and fairness, I think it would be
9 incumbent on the Court to let me call him back to show
10 him this photograph.

11 (Photograph was shown to the Court.)

12 **BY THE COURT:** Is that the same vehicle?

13 (Mr. Evans looks at the photograph.)

14 **BY MR. EVANS:** It could be. I can't say for
15 sure.

16 **BY THE COURT:** Well, before I allow this, y'all
17 need to go discuss the, both sides go discuss with
18 Mr. Thornburg whether he can identify that picture.
19 If he can't identify it, then there is nothing he can
20 testify to.

21 **BY MR. EVANS:** Your Honor, for the record, this
22 same witness in Tupelo, which I know that is not
23 before the Court, but they are aware of the
24 transcripts. This same witness in Tupelo saw the
25 glare--

26 **BY THE COURT:** I agree, Mr. Evans. But in order
27 to be rather safe than sorry, if he can identify that
28 picture, I will let him testify only to that
29 particular issue about that, but I don't even know

Bench Conference

1 whether he can do that at this time. Do you want to
2 go with them?

3 **BY MR. EVANS:** Yes, sir.

4 **BY THE COURT:** Okay.

5 END BENCH CONFERENCE.

6 (ALL COUNSEL AND THE DEFENDANT LEAVE THE COURTROOM.

7 UPON THEIR RETURN TO THE COURTROOM, THERE WAS THE FOLLOWING

8 FURTHER BENCH CONFERENCE OUT OF THE HEARING OF THE JURY:)

9 **BY MR. EVANS:** They want to make a record of the
10 fact that the Sheriff says he can't say for sure if
11 that's the same car or not.

12 **BY THE COURT:** Okay, well, if he can't, then the
13 picture is not relevant at all because we don't even
14 know whose car it is. It has never been identified by
15 anybody. Okay, make whatever record you would like.

16 **BY MR. DE GRUY:** I had to step closer so you can
17 hear me.

18 **BY THE COURT:** Let the record reflect the Sheriff
19 is standing before the bench.

20 **BY MR. DE GRUY:** Your Honor, do you want me to
21 mark this for identification?

22 **BY THE COURT:** Yeah.

23 (PHOTOGRAPH OF A CAR WAS MARKED AS DEFENDANT'S
24 EXHIBIT D-5 FOR IDENTIFICATION.)

25 EXAMINATION OF BILL THORNBURG BY MR. DE GRUY: (AT THE BENCH)

26 Q. I'm showing you a Polaroid of a car that has been
27 marked as D-5 for identification. Is that the same car you
28 testified to, Doyle Simpson's car?

29 A. There is a lot of shadow on it. It's a car that

Bench Conference

1 looks like his. Whether it's the same color or not, I --
2 there is so much shadow on it you can't tell.

3 **BY THE COURT:** Okay. The Court rules that this
4 picture has just now been produced. It has not been
5 identified by anybody as to whose car it is, what it
6 is. The Sheriff cannot identify it as Doyle Simpson's
7 vehicle. Therefore it's not relevant. It might, it
8 might have been arguable under cross-examination or
9 anything like that, but as to surrebuttal, it is not
10 admissible. And the Court rules that there will be no
11 surrebuttal of this witness.

12 **BY MR. DE GRUY:** And Your Honor, for the record,
13 this picture was provided to us by the District
14 Attorney's Office in discovery.

15 **BY THE COURT:** Right. And they have had
16 discovery for months now and didn't cross-examine him
17 on it when they had the opportunity. The Court finds
18 also that this issue has -- the jury has sufficient
19 information to be able to determine this issue one way
20 or another.

21 **END BENCH CONFERENCE.**

22 **BY MR. CARTER:** We are done.

23 **BOTH SIDES FINALLY REST.**

24 **BY THE COURT:** Ladies and gentlemen, you have now
25 heard all the testimony in this case. I must meet
26 with the lawyers and prepare the instruction on the
27 law that I'm going to give you. I will do that and
28 then bring you back. I will read those instructions
29 to you, and then the lawyers will argue this case to

Consideration of Instructions - JURY OUT

1 you. Then I will turn all of this over to you for
2 your decision. You may go to the jury room.

3 JURY LEAVES THE COURTROOM.

4 **BY THE COURT:** Mr. Hill, do you have your new
5 instructions?

6 **BY MR. HILL:** Yes, sir. I have provided Defense
7 a copy of that. I think that's the main one that had
8 to be redone at this point.

9 **BY MR. DE GRUY:** There are a couple of other
10 instructions.

11 (Mr. Hill and Mr. de Gruy both handed documents to
12 the Court.)

13 INSTRUCTION NO. S-1: **BY THE COURT:** Thank you,
14 sir. Okay, have you looked at this new instruction, new S-1?

15 **BY MR. DE GRUY:** Yes, Your Honor. And at this
16 time for the record, a question we had left open yesterday
17 was the circumstantial evidence instruction, and I have
18 researched that last night, and we are going to withdraw our
19 circumstantial evidence instructions without waiving our
20 argument on the unreliability of and inadmissibility of the
21 testimony that took it out of the circumstantial evidence
22 case. I concede that the law does cover that, and it
23 wouldn't be proper.

24 **BY THE COURT:** Okay. The Court does find
25 specifically too first in Moore v. State, 787 So.2d 1282 and
26 Ladner v. State, 584 So.2d 743 that this is a direct evidence
27 case. Okay, let's see. Do you object-- other than that part
28 of it, do you object to anything in the form of it, of S-1?

29 **BY MR. DE GRUY:** Your Honor, we have submitted a,

Consideration of Instructions - JURY OUT

as we discussed yesterday, that we were asking for a murder instruction.

BY THE COURT: Simple murder, right?

BY MR. DE GRUY: Simple murder. And we have submitted as D-16A through D in one instruction the capital murder charge and the murder charge. And it's our position that presenting it that way and with, in four separate instructions is the easiest for the jury to follow and understand the instruction. The State's instruction is, in our position, confusing or could confuse and particularly with the murder instruction, that they should be together.

BY THE COURT: Mr. Hill, I believe you told me you had a simple murder instruction?

BY MR. HILL: I do, Your Honor. I didn't know if I should proffer that to the Court, if the Court had made that decision.

BY THE COURT: Well, I have not made that decision. I will hear the argument on it.

BY MR. EVANS: Your Honor, would it be okay if y'all go ahead through the rest of these instructions and give me just a few minutes while y'all are doing that before we argue on that particular instruction?

BY THE COURT: Okay, I have got the Fairchild case here if you want to look at it.

BY MR. EVANS: Yes, sir.

BY THE COURT: I think it is clear as to what it says in relation to this case.

(Case handed to Mr. Evans.)

BY MR. EVANS: Thank you, Judge.

Consideration of Instructions - JURY OUT

1 **BY THE COURT:** I'm just going to wait until you
2 do that.

3 **BY MR. EVANS:** Yes, sir.

4 (Mr. Hills hands more instructions to the Court.
5 Mr. Evans left the courtroom with the victims' families, and
6 upon his return, proceedings continued as follows:)

7 **BY THE COURT:** Mr. Evans now having read the
8 Fairchild case, do you have any objection in this particular
9 case to a lesser included instruction?

10 **BY MR. EVANS:** No, sir.

11 **BY THE COURT:** Okay. I am going to grant S-1 as
12 tendered by the State which is the capital murder
13 instruction. I note there is no objection as to the form of
14 that instruction from the Defense. Is that correct? Other
15 than the fact that you would rather have yours?

16 **BY MR. DE GRUY:** That our form, to the extent
17 that we believe our form is the one that should be submitted.

18 **BY THE COURT:** Okay. I do not agree with that.
19 I think it more properly should be submitted in the form that
20 I'm going to give it. And by that, I mean there were several
21 instructions to be read in a row and in sequence which will,
22 I think, better inform the jury as to what their options are.
23 So S-1 is granted as Instruction number 6.

24 INSTRUCTION NO. S-2: **BY THE COURT:** S-2 is--

25 **BY MR. HILL:** -- You may want to look at S-2.
26 I'm not sure I have resubmitted the proper--

27 **BY THE COURT:** Oh, that's right; you did. I'm
28 sorry.

29 **BY MR. HILL:** I believe that's the correct

Consideration of Instructions - JURY OUT
version of it.

BY THE COURT: S-2 instructs the jury on the elements of armed robbery. Is there any objection to that?

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: That is given as Instruction number 7.

INSTRUCTION NO. S-6: **BY THE COURT:** S-6 is the first part of the lesser included instruction which tells the jury that they can find the lesser included offense. Any objection to the form there?

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: That is given as Instruction number 8.

INSTRUCTION NO. S-7: **BY THE COURT:** This next one is the lesser included instruction. You have got it entitled as S-1. I'm going to make that S -- let's don't make it S-1. It's not S-1. It's just, let's say it's S-7. Okay?

BY MR. HILL: That's fine, Your Honor. I just failed to make that change on the number.

BY THE COURT: All right. This has four different -- well, it covers all four counts and instructs them on the elements of simple murder. As to the form, do you have any objection to that?

BY MR. DE GRUY: No objection to the form.

BY THE COURT: And that is given as Instruction number 9.

INSTRUCTION NO. S-3: **BY THE COURT:** S-3 is an instruction concerning robbery. Any objection to it? I think yesterday y'all said that you had no objection to S-3.

Consideration of Instructions - JURY OUT

1 **BY MR. DE GRUY:** This is the in the presence?

2 **BY THE COURT:** A thing in the presence of.

3 **BY MR. DE GRUY:** No objection.

4 **BY THE COURT:** Okay. That is Instruction number
5 10.

6 INSTRUCTION NO. S-4: **BY THE COURT:** S-4 is the one
7 that directs them that this is only a guilt phase of the
8 trial. Any objection to that?

9 **BY MR. DE GRUY:** No objection.

10 **BY THE COURT:** That is Number 11.

11 INSTRUCTION NO. S-5: **BY THE COURT:** S-5 is
12 deliberate design, defines deliberate design. I believe
13 yesterday you had no objection?

14 **BY MR. DE GRUY:** That's correct.

15 **BY THE COURT:** Is that still correct?

16 **BY MR. DE GRUY:** That's correct.

17 FORM OF THE VERDICT INSTRUCTION: **BY THE COURT:**
18 Okay. This next one I have is a form of the verdict form,
19 and that is not going to be accurate.

20 **BY MR. EVANS:** Right.

21 **BY THE COURT:** We are going to have to redo that
22 that would include that.

23 (To the Court Reporter) We also need our form that we use.
24 Have you got it in the computer? The one where you
25 check.

26 **BY THE COURT REPORTER:** It will have to be
27 changed.

28 **BY THE COURT:** Okay. All right, we will need
29 that. All right, I will withhold that on the form of

Consideration of Instructions - JURY OUT

1 the verdict until we prepare a new one.

2 INSTRUCTION NO. D-14: BY THE COURT: Okay, as to
3 D-14, have you got any authority for that instruction?

4 BY MR. DE GRUY: Ferrill v. State, 643 So.2d 501.

5 BY THE COURT: Did it have that instruction in
6 it?

7 BY MR. DE GRUY: I don't have the case with me.
8 I can tell you that it's a clear statement of the law, and I
9 think it says that instruction, an instruction should be
10 given when--

11 BY THE COURT: -- I need to see that case then.

12 BY MR. DE GRUY: Do we have a law library back
13 here?

14 BY THE COURT: Uh-hum. How complete it is is
15 another story now. Okay, I withhold my ruling on
16 D-14.

17 INSTRUCTION NO. D-15: BY THE COURT: Okay, D-15.
18 I mean D-15A B, C, and D are all instructions of lesser
19 included offense of murder. I have already given those
20 instructions. Therefore, I refuse these as being
21 repetitious.

22 INSTRUCTION NO. D-2A: BY THE COURT: Okay, is D-2A
23 is a form of the verdict. I'm going to have one of those.
24 The Court will enter its own instruction as to the form, so
25 it's refused.

26 INSTRUCTIONS D-1A, D-1B, D-1C AND D-1D: BY MR. DE
27 GRUY: The next one is a correction of the count number.

28 BY THE COURT: I am trying to find all my stuff.
29 I have kind of got it scattered. D-1A, D-1B, D-1C and D-1D

Consideration of Instructions - JURY OUT

are requests for peremptory instructions on the four different counts. They are refused.

(Ms. Ferraro returns to the courtroom with case law.)

INSTRUCTION NO. D-16A, D-16B, D-16C AND D-16D: BY THE COURT: Okay D-16A, D-16B, D-16C, and D-16D are instructions, essentially the same instruction as S-1, and I refuse them as being repetitious.

CONTINUATION ON INSTRUCTION D-14: BY MR. DE GRUY: Your Honor, this is Ferrill v. State, 643 So.2d 501, a 1994. On page 504 is the jury instruction.

BY THE COURT: All right.

(Pause while the Court reads.)

BY THE COURT: Are y'all familiar with this case, Ferrill v. State?

BY MR. EVANS: No, sir, but as far as this particular instruction, the State would argue against it for several reasons. One, it's telling the jury how to--

BY THE COURT: -- This instruction they have submitted is not proper. But it would look like under Ferrill, they are entitled to an impeachment instruction. And I will grant you one consistent with the instructions in Ferrill if y'all want to redraw one.

BY MR. DE GRUY: Okay. Do you want a verbatim--

BY THE COURT: I think it needs to be -- the Court has approved -- there are two instructions that are substantially the same contained in the Ferrill case, and they have approved both of those instructions. So those are the instructions that I will give, or one of those, and I

Consideration of Instructions - JURY OUT

1 don't think there is a dime's worth of difference between
2 them. And so I will give one of them. I tell you what; if
3 you will do this, Mr. de Gruy; if you will come up here and
4 pick out which one of these you want, I will get the Court
5 Reporter to type them for us.

6 (Mr. de Gruy approaches the bench.)

7 **BY THE COURT:** That is the one in this case, and
8 that was the one in the former case, and I don't think there
9 is hardly any, there is very little difference. Have you
10 seen this instruction?

11 **BY MR. EVANS:** No, sir.

12 **BY THE COURT:** You need to look at it too.

13 (Mr. Evans approaches the bench.)

14 **BY MR. EVANS:** I have seen that one, Your Honor.

15 (Pause while everyone reads.)

16 **BY THE COURT:** Do you have any objection to the
17 form of it?

18 **BY MR. EVANS:** No, sir.

19 (FOLLOWING A RECESS FOR THE COURT REPORTER TO GO
20 TYPE THE INSTRUCTION REFERRED TO ABOVE AND THE FORM OF THE
21 VERDICT INSTRUCTION, OBJECTIONS TO INSTRUCTIONS CONTINUED IN
22 OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT PRESENT BUT
23 WITH THE JURY STILL OUT:)

24 INSTRUCTION NO. D-17: **BY THE COURT:** Has everybody
25 looked at the impeachment instruction up here?

26 **BY MR. DE GRUY:** Yes, sir.

27 **BY THE COURT:** Mr. Evans?

28 **BY MR. EVANS:** I don't believe I have, Your
29 Honor. But as long as it's the one that was in the book, I

Consideration of Instructions - JURY OUT

1 don't object to it.

2 **BY THE COURT:** I don't have the case in front of
3 me. I'm assuming it is. Linda typed it out of the book.

4 **BY MR. EVANS:** It's fine.

5 **BY THE COURT:** I don't know what "D" number it
6 is, but just so we have some designation, I'm going to make
7 the impeachment instruction D-20. That would be far enough
8 over, wouldn't it?

9 **BY MR. DE GRUY:** Yeah, that will be -- I believe
10 number 17. It would be D-17.

11 **BY THE COURT:** 17, okay. It is given, and it's
12 given as Instruction number 13.

13 INSTRUCTION NO. C-6: **BY THE COURT:** The next one,
14 the form of the verdict will be C-6 and Instruction number
15 14. Y'all have looked at that and approved it; is that
16 correct?

17 **BY MR. DE GRUY:** Yes, Your Honor. As to form.
18 We had submitted our own.

19 **BY THE COURT:** Right.

20 **BY MR. DE GRUY:** And with both of these
21 instructions, we stand by the ones we submitted, but we have
22 no objection to the form of these instructions based on the
23 Court's rulings.

24 **BY THE COURT:** Okay. Did they show you the
25 verdict form that we use?

26 **BY MR. DE GRUY:** Yes.

27 **BY THE COURT:** All right.

28 INSTRUCTION NO. D-3: **BY MR. DE GRUY:** Your Honor,
29 I think we had discussions yesterday about D-3 which was the

Consideration of Instructions - JURY OUT
foreperson instruction.

BY THE COURT: I generally, I am going to give a foreperson instruction if, in fact, there should be a sentencing phase. I don't think the law requires it at the guilt phase. I have never given it at the guilt phase.

INSTRUCTION NO. D-5: **BY MR. DE GRUY:** And just so the record is clear. I think you also denied D-5 yesterday. Is that--

BY THE COURT: What was that?

BY MR. DE GRUY: It's a Sandstrom instruction, the essential, proving every essential fact.

BY THE COURT: Let me look at it and see.

(Pause while the Court reviews several instructions and then goes back over Defense Instructions as follows:)

BY THE COURT: Okay, there is a D-2 that y'all had filed and a D-2A. I refused D-2A. Did y'all withdraw D-2?

BY MR. DE GRUY: Yes, I believe D-2 was the form of the verdict that didn't include the murder instruction, so we withdrew D-2, and then you denied the form of the verdict that we submitted.

BY THE COURT: Okay. D-3 is that foreman instruction which I will give if this case goes further than this. It's refused at this point. D-4 was refused or withdrawn because the Court had already given that instruction.

BY MR. DE GRUY: That's correct.

BY THE COURT: Withdrawn?

BY MR. DE GRUY: Yes, sir. D-4 is withdrawn.

Consideration of Instructions - JURY OUT

1 FURTHER CONSIDERATION OF INSTRUCTION D-5: **BY THE**

2 **COURT:** I refuse D-5 on the basis that it was covered by the
3 Court's instructions.

4 INSTRUCTIONS D-6 AND D-7: **BY THE COURT:** D-6 is a
5 circumstantial instruction.

6 **BY MR. DE GRUY:** D-6 and 7 were withdrawn.

7 INSTRUCTION NO. D-8: **BY THE COURT:** Okay. D-8,
8 the Court -- D-8 is covered by the Court's first instruction.
9 And it may add some things, but the Court's first instruction
10 adequately advises the jury as to what they are to consider
11 in weighing the evidence. Therefore, I refuse it.

12 INSTRUCTION NO. D-9: **BY THE COURT:** D-9,
13 withdrawn? I have given it.

14 **BY MR. DE GRUY:** I had marked that it was denied
15 yesterday but--

16 **BY THE COURT:** Well, you don't have to withdraw
17 it. I have given it in C-1. You can withdraw it, or I will
18 deny it, one or the other, whatever you want.

19 **BY MR. DE GRUY:** You can deny it.

20 **BY THE COURT:** Okay.

21 INSTRUCTION NO. D-10: **BY THE COURT:** I have given
22 an identification instruction. When you couple it with the
23 instructions I have given in C-1 as to how they are to
24 consider the evidence and the credibility of witnesses and
25 things and other instructions, taking the instructions as a
26 whole, D-10 has already been covered by the other Court's
27 instructions, and I refuse it.

28 INSTRUCTION NO. D-11: **BY THE COURT:** What do you
29 say to D-11?

Instructions read to jury

1 **BY MR. HILL:** We looked at that yesterday. That
2 is covered by the Court's Instruction C-1.

3 **BY THE COURT:** Okay. I'm going to refuse it.

4 INSTRUCTION NO. D-12: **BY THE COURT:** Also, D-12 is
5 covered by C-1.

6 INSTRUCTION NO. D-13: **BY THE COURT:** D-13 is a
7 hung jury instruction. I refuse it.

8 **BY THE COURT:** Okay. Are there any defense
9 instructions now that I have not ruled on?

10 **BY MR. DE GRUY:** No, Your Honor. I think that
11 covers it.

12 JURY ENTERS THE COURTROOM.

13 **BY THE COURT:** Ladies and gentlemen, at the
14 outset of this trial, I told you that at the end of
15 the trial I would read to you my instructions on the
16 law, and I'm going to do that right now. These
17 instructions, as you see, are in writing. You will
18 have them to take with you to the jury room for your
19 deliberations after I have read these and the lawyers
20 will argue this case.

21 "You have heard all of the testimony and received the
22 evidence and will hear the arguments of counsel shortly. I
23 will now instruct you as to the rules of law which you will
24 apply to this evidence in reaching your verdict.

25 When you took your place in the jury box, you took an
26 oath that you would follow and apply these rules to the
27 evidence in reaching your verdict in this case. It is,
28 therefore, your duty as jurors to follow the law which I
29 shall now state to you.

Instructions read to jury

1 You are not to be concerned with the wisdom of any
2 rule of law. Regardless of any opinion you may have as to
3 what the law ought to be, it would be a violation of your
4 sworn duty to base your verdict upon any other view of law
5 than that given in these instructions.

6 You are not to single out one instruction alone as
7 stating the law, but you must consider these instructions as
8 a whole.

9 It is your exclusive province to determine the facts
10 in this case and to consider and weigh the evidence for that
11 purpose. The authority thus vested in you is not an
12 arbitrary power, but must be exercised with sincere judgment,
13 sound discretion and in accordance with the rules of law.

14 Both parties have a right to expect that you will
15 conscientiously consider and weigh the evidence and apply the
16 law of the case.

17 It is your duty to determine the facts and to
18 determine them from the evidence produced in open court. You
19 are to apply the law to the facts and in this way decide the
20 case. You should not be influenced by bias, sympathy, or
21 prejudice. Your verdict should be based on the evidence and
22 not upon speculation, guesswork, or conjecture.

23 You are required and expected to use your good common
24 sense and sound honest judgment in considering and weighing
25 the testimony of each witness who has testified in this case.

26 The evidence which you are to consider consists of
27 the testimony and statements of the witnesses and exhibits
28 offered and received. You are also permitted to draw such
29 reasonable inferences from the evidence as seem justified in

Instructions read to jury
light of your own experience.

Arguments, statements, and remarks of counsel are intended to help you understand the evidence and apply the law, but are not evidence. If any argument, statement, or remark has no basis in the evidence, then you should disregard that argument, statement, or remark.

The production of evidence in court is governed by rules of law. From time to time during the trial it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for my rulings since they are controlled and governed by the rules of law. You should not infer from my rulings on these motions or objections to the evidence that I have any opinion on the merits favoring one side or the other. You should not speculate as to possible answers to questions which I did not require to be answered. Further, you should not draw any inference from the content of these questions.

You are to disregard all evidence which I excluded from consideration during the course of the trial.

If in stating the law to you, I repeat any rule, direction, or idea; or if I state the same in varying ways, no emphasis is intended, and you must not draw any inference therefrom. The order in which these instructions are given has no significance as to their relative importance.

The law presumes every person charged with the commission of a crime to be innocent. This presumption places upon the State the burden of proving the defendant guilty of every material element of the crime with which the defendant is charged. Before you can return a verdict of

Instructions read to jury

1 guilty, the State must prove to your satisfaction beyond a
2 reasonable doubt that the defendant is guilty. The
3 presumption of innocence attends the defendant throughout the
4 trial and prevails at its close unless overcome by evidence
5 which satisfies the jury of the Defendant's guilt beyond a
6 reasonable doubt. The defendant is not required to prove his
7 or her innocence.

8 The verdict of the jury must represent the
9 considered judgment of each juror. In order to return a
10 verdict, it will be necessary that each juror agree. In
11 other words, all twelve jurors must agree before returning a
12 verdict in this case. It is your sworn duty as jurors to
13 consult with one other and to deliberate in view of reaching
14 an agreement, if you can do so without violence to your
15 individual judgment. Each of you must decide the case for
16 yourself, but do so only after an impartial consideration of
17 the evidence with your fellow jurors. In the course of your
18 deliberations, do not hesitate to re-examine your own views
19 and change your opinion if convinced it is erroneous, but do
20 not surrender your honest convictions as to the weight or
21 effect of evidence solely because of the opinion of your
22 fellow jurors or for the purpose of returning a verdict.

23 Members of the jury, shortly after you were
24 selected, I informed you that you could take notes, and I
25 instructed you as to the appropriate use of any notes that
26 you might take. Most importantly, an individual juror's
27 notes may be used by that juror only and may not be shown to
28 or shared with other jurors. Notes are only a memory aid,
29 and a juror's notes may be used only as an aid to refresh

Instructions read to jury

1 that particular juror's memory and assist that juror in
2 recalling the actual testimony. Each of you must rely on
3 your own independent recollection of the proceedings.
4 Whether you took notes or not, each of you must form and
5 express your own opinion as to the facts of this case. Be
6 aware that during the course of your deliberations there
7 might be the temptation to allow notes to cause certain
8 portions of the evidence to receive undue emphasis and
9 receive attention out of proportion to the entire evidence.
10 But a juror's memory or impression is entitled to no greater
11 weight just because he or she took notes, and you should not
12 be influenced by the notes of other jurors.

13 Thus, during your deliberations, do not assume
14 simply because something appears in your notes that it
15 necessarily took place in court.

16 The burden of proof in this case is on the State to
17 prove the Defendant's guilt beyond a reasonable doubt. The
18 defendant is not required to prove anything in this cause or
19 to testify in his own behalf. You must not hold the facts
20 that the Defendant did not testify in this case against him
21 or as any evidence of guilt.

22 The Court instructs the jury that the law looks
23 with suspicion and distrust on the testimony of an alleged
24 informant and requires the jury to weigh the same with great
25 care and suspicion. You should weigh the testimony from an
26 alleged informant in passing on what weight, if any, you
27 should give this testimony. You should weigh it with great
28 care and caution and look upon it with distrust and
29 suspicion.

Instructions read to jury

1 The Court instructs that in reaching your verdict,
2 you are to consider all of the evidence concerning the entire
3 case and the circumstances surrounding the crime. One of the
4 issues in this case is the identification of Curtis Giovanni
5 Flowers as the perpetrator of the crime. As with each
6 element of the crime charged, the State has the burden of
7 proving identity beyond a reasonable doubt. And before you
8 may convict Curtis Giovanni Flowers, you must be satisfied
9 beyond a reasonable doubt of the accuracy of the
10 identification of Curtis Giovanni Flowers. If after
11 considering all of the evidence concerning the crime and
12 witness identification of Curtis Giovanni Flowers as the
13 person who committed the crime, you are not convinced beyond
14 a reasonable doubt that he is the person who committed the
15 crime, then you must find him not guilty. Identification
16 testimony is an expression of belief or impression by the
17 witness. You must judge its value and reliability from the
18 totality of the circumstances surrounding the crime and the
19 subsequent identification. In appraising the identification
20 testimony of a witness, you should consider the following:

21 Did the witness have an adequate opportunity to
22 observe the offender?

23 Did the witness observe the offender with an
24 adequate degree of attention?

25 Did the witness provide an accurate description of
26 offender of the crime?

27 How certain is the witness of the identification?

28 How much time passed between the crime and the
29 identification?

Instructions read to jury

1 If, after examining all of the testimony and the evidence,
2 you have a reasonable doubt that Curtis Giovanni Flowers was
3 the person who committed the crime, then you must find Curtis
4 Giovanni Flowers not guilty.

5 The Defendant, Curtis Giovanni Flowers, has been
6 charged with four separate indictments, in four separate
7 indictments with the crimes of the capital murders of Bertha
8 Tardy, Robert Golden, Carmen Rigby, and Derrick Stewart.
9 These charges have been consolidated for trial in this case;
10 therefore, all twelve of you must unanimously agree on and
11 return a separate verdict for each of the four charges.

12 If you believe from all the evidence in this case,
13 beyond a reasonable doubt, that the Defendant, Curtis
14 Giovanni Flowers, did on or about July the 16th, 1996, in
15 Montgomery County, Mississippi, willfully, unlawfully,
16 feloniously, either with or without deliberate design, then
17 and there kill and murder Bertha Tardy, a human being,
18 without authority in law, when engaged in the commission of
19 the crime of armed robbery, then if you so believe from all
20 the evidence in this case beyond a reasonable doubt that the
21 Defendant is guilty of the capital murder of Bertha Tardy,
22 then it is your sworn duty to say so by your verdict.

23 If the State has failed to prove any one or more of
24 these elements beyond a reasonable doubt, then you shall find
25 the Defendant not guilty of the capital murder of Bertha
26 Tardy.

27 If you believe from all the evidence in this case,
28 beyond a reasonable doubt, that the Defendant, Curtis
29 Giovanni Flowers, did on or about July 16, 1996, in

Instructions read to jury

1 Montgomery County, Mississippi, willfully, unlawfully,
2 feloniously, either with or without deliberate design, then
3 and there kill and murder Robert Golden, a human being,
4 without authority of law, when engaged in the commission of
5 the crime of armed robbery, then if you believe from all the
6 evidence in this case beyond a reasonable doubt that the
7 Defendant is guilty of the capital murder of Robert Golden,
8 then it is your sworn duty to say so by your verdict.

9 If the State has failed to prove any one or more of
10 these elements beyond a reasonable doubt, then you shall find
11 the Defendant not guilty of the capital murder of Robert
12 Golden.

13 If you believe from all the evidence in this case,
14 beyond a reasonable doubt, that the Defendant, Curtis
15 Giovanni Flowers, did on or about July 16, 1996, in
16 Montgomery County, Mississippi, willfully, unlawfully, and
17 feloniously, either with or without deliberate design, then
18 and there kill and murder Carmen Rigby, a human being,
19 without authority of law when engaged in the commission of
20 the crime of armed robbery, then if you so believe from all
21 the evidence in this case beyond a reasonable doubt that the
22 Defendant is guilty of the capital murder of Carmen Rigby,
23 then it is your sworn duty to say so by your verdict.

24 If the State has failed to prove any one of more or
25 these elements beyond a reasonable doubt, then you shall find
26 the Defendant not guilty of the capital murder of Carmen
27 Rigby.

28 If you believe from all the evidence in this case,
29 beyond a reasonable doubt, that the Defendant, Curtis

Instructions read to jury

1 Giovanni Flowers, did on or about July 16, 1996, in
2 Montgomery County, Mississippi, willfully, unlawfully, and
3 feloniously, either with or without deliberate design, then
4 and there kill and murder Derrick Stewart, a human being,
5 without authority of law when engaged in the commission of
6 the crime of armed robbery, then if you so believe from all
7 the evidence in this case beyond a reasonable doubt that the
8 Defendant is guilty of the capital murder of Derrick Stewart,
9 then it is your sworn duty to say so by your verdict.

10 If the State has failed to prove any one or more of
11 these elements beyond a reasonable doubt, then you shall find
12 the Defendant not guilty of the capital murder of Derrick
13 Stewart.

14 If you believe from all the evidence in this case
15 beyond a reasonable doubt, that the Defendant, Curtis
16 Giovanni Flowers, did on or about July the 16th, 1996, in
17 Montgomery County, Mississippi, willfully, unlawfully and
18 feloniously, with the felonious intent to permanently deprive
19 the owner thereof, take, steal and carry away or attempt to
20 take, steal and carry away the personal property of Bertha
21 Tardy, doing business as Tardy Furniture Store, from the
22 presence and against the will of Bertha Tardy, by violence to
23 her person with a deadly weapon, then the same would
24 constitute armed robbery.

25 The Court instructs the jury that if warranted by
26 the evidence, you may find the Defendant guilty of a crime
27 lesser than capital murder on any one or more of the four
28 charges. However, notwithstanding this right, it is your
29 duty to accept the law as given to you by the Court, and if

Instructions read to jury

1 the facts and law warrant a conviction for the crime of
2 capital murder, then it is your duty to make such finding
3 uninfluenced by your power to find a lesser offense. This
4 provision is not designed to relieve you from the performance
5 of an unpleasant duty. It is included to prevent a failure
6 of justice if the evidence fails to prove the original
7 charge of capital murder on any one or more of the four
8 charges, but does justify a verdict for the lesser crime of
9 murder.

10 If you find that the" defendant has failed-- I
11 meant "that the State has failed to prove any one or more of
12 the essential elements of the crime of capital murder on any
13 or all of the four charges of capital murder, you must find
14 the Defendant not guilty of capital murder on that charge or
15 charges as the case may be. You will then proceed with your
16 deliberations to decide whether the State has proved beyond a
17 reasonable doubt all of the elements of the lesser crime of
18 murder on that charge or charges as the case may be.

19 The crime of murder is distinguished from the crime
20 of capital murder by the failure to prove that the murder or
21 murders, as the case may be, were committed when the
22 defendant was engaged in the crime of armed robbery.

23 If you believe from all the evidence in this case
24 beyond a reasonable doubt, that the Defendant, Curtis
25 Giovanni Flowers, did on or about July the 16th, 1996, in
26 Montgomery County, Mississippi, willfully, unlawfully, and
27 feloniously, with the deliberate design to effect death, then
28 and there kill and murder Bertha Tardy, a human being,
29 without authority of law, then if you so believe from all the

Instructions read to jury

1 evidence in this case beyond a reasonable doubt, that the
2 defendant is guilty of the murder of Bertha Tardy, then it is
3 your sworn duty to say so by your verdict.

4 If the State has failed to prove any one or more of
5 these elements beyond a reasonable doubt, then you shall find
6 the defendant not guilty of the murder of Bertha Tardy.

7 If you believe from all the evidence in this case
8 beyond a reasonable doubt, that the Defendant, Curtis
9 Giovanni Flowers, did on or about July 16, 1996, in
10 Montgomery County, Mississippi, willfully, unlawfully, and
11 feloniously, with deliberate design to effect death, then and
12 there kill and murder Robert Golden, a human being, without
13 authority of law, then if you so believe from all the
14 evidence in this case beyond a reasonable doubt that the
15 defendant is guilty of the murder of Robert Golden, then it
16 is your sworn duty to say so by your verdict.

17 If the State has failed to prove any one or more of
18 these elements beyond a reasonable doubt, then you shall find
19 the defendant not guilty of the murder of Robert Golden.

20 If you believe from all the evidence in this case
21 beyond a reasonable doubt, that the Defendant, Curtis
22 Giovanni Flowers, did on or about July 16, 1996, in
23 Montgomery County, Mississippi, willfully, unlawfully, and
24 feloniously, with deliberate design to effect death, then and
25 there kill and murder Carmen Rigby, a human being, without
26 authority of law, then if you so believe from all the
27 evidence in this case beyond a reasonable doubt that the
28 defendant is guilty of the murder of Carmen Rigby, then it is
29 your sworn duty to say so by your verdict.

Instructions read to jury

1 If the State has failed to prove any one or more of
2 these elements beyond a reasonable doubt, then you shall find
3 the Defendant not guilty of the murder of Carmen Rigby.

4 If you believe from all the evidence in this case
5 beyond a reasonable doubt, that the Defendant, Curtis
6 Giovanni Flowers, did on or about July the 16th, 1996, in
7 Montgomery County, Mississippi, willfully, unlawfully, and
8 feloniously, with deliberate design to effect death, then and
9 there kill and murder Derrick Stewart, a human being, without
10 authority of law, then if you so believe from all the
11 evidence in this case beyond a reasonable doubt that the
12 defendant is guilty of the murder of Derrick Stewart, then it
13 is your sworn duty to say so by your verdict.

14 If the State has failed to prove any one or more of
15 these elements beyond a reasonable doubt, then you shall find
16 the defendant not guilty of the murder of Derrick Stewart.

17 A thing is in the presence of a person, in respect
18 to robbery, which is so within her reach, inspection,
19 observation, or control that he could, if not overcome with
20 violence or prevented by fear, retain his possession of it.

21 This phase of the trial deals only with the
22 question of the guilt or innocence of the Defendant, Curtis
23 Giovanni Flowers. In the event that you find the defendant
24 guilty of capital murder, then you will then and only then,
25 after being further instructed by the Court in the second
26 phase of this trial, consider the appropriate sentence to be
27 imposed.

28 The Court further instructs the jury that
29 deliberate design as used elsewhere in these instructions,

Instructions read to jury

means intent to kill, without authority of law and not being justifiable or legally excusable.

A deliberate design cannot be formed at the very moment of the fatal act; however, the deliberate design need not exist in the mind of the defendant for any definite time, not for hours, days, or even minutes, but if there is deliberate design, and it exists in the mind of the defendant but for an instant before the fatal act, this is sufficient deliberate design to constitute the offense of capital murder.

The testimony of a witness or witnesses may be discredited or impeached by showing that on a prior occasion they have made a statement which is consistent with or contradictory to their testimony in this case. In order to have this effect, the inconsistent or contradictory prior statement must involve a matter which is material to the issues in this case.

The prior statement of the witness or witnesses can be considered by you only for the purpose of determining the weight or believability that you give to the testimony of the witnesses or witnesses that made them. You may not consider the prior statement as proving the guilt or innocence of the defendant.

Your verdict must be plainly marked on the separate form provided by the Court. It need not be signed by you and may be in either of the following forms. If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Bertha Tardy, then the form of your verdict shall be: 'We, the jury, find the defendant guilty of the capital

Instructions read to jury

murder of Bertha Tardy.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the lesser included offense of murder of Bertha Tardy, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the lesser included offense of murder of Bertha Tardy.'

If you find the Defendant, Curtis Giovanni Flowers, not guilty of the capital murder or the lesser included offense of murder of Bertha Tardy, then the form of your verdict shall be: 'We, the jury, find the Defendant not guilty of either the capital murder or the lesser included offense of murder of Bertha Tardy.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Robert Golden, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the capital murder of Robert Golden.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the lesser included offense of murder of Robert Golden, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the lesser included offense of murder of Robert Golden.'

If you find the Defendant, Curtis Giovanni Flowers, not guilty of the capital murder or the lesser included offense of murder of Robert Golden, then the form of your verdict shall be: 'We, the jury, find the Defendant not guilty of either the capital murder or the lesser included offense of murder of Robert Golden.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Carmen Rigby, then the form

Instructions read to jury

of your verdict shall be: 'We, the jury, find the Defendant guilty of the capital murder of Carmen Rigby.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the lesser included offense of murder of Carmen Rigby, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the lesser included offense of murder of Carmen Rigby.'

If you find the Defendant, Curtis Giovanni Flowers, not guilty of the capital murder or the lesser included offense of murder of Carmen Rigby, the form of your verdict shall be: 'We, the jury, find the Defendant not guilty of either the capital murder or the lesser included offense of murder of Carmen Rigby.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Derrick Stewart, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the capital murder of Derrick Stewart.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the lesser included offense of murder of Derrick Stewart, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the lesser included offense of murder of Derrick Stewart.'

If you find the Defendant, Curtis Giovanni Flowers, not guilty of either the capital murder or the lesser included offense of murder of Derrick Stewart, the form of your verdict shall be: 'We, the jury, find the Defendant not guilty of either the capital murder or the lesser included offense of murder of Derrick Stewart.'"

All of those verdicts are on this verdict form.

Final Argument by Mr. Evans

1 When you have unanimously reached a verdict on each of
2 those counts, then you should check that verdict. At
3 that time then you should knock on the door. The
4 bailiffs will tell me that you have reached a verdict,
5 and I will bring you back into Court to deliver that
6 verdict. Mr. Evans.

7 **BY MR. EVANS:** Thank you, Your Honor.

8 FINAL ARGUMENT BY MR. EVANS:

9 Ladies and gentlemen, several days ago we started
10 this trial. We did the opening statements. In those opening
11 statements I laid out for you a road map of what we expect to
12 prove in this trial in hopes that you would follow it as we
13 went through the trial. I'm going to briefly go back through
14 what we have proven to you and show you that we did, in fact,
15 prove to you the elements that we told you we would.

16 To start with, back in July, July 16, 1996,
17 everything was operating normal in Winona. Tardy Furniture
18 store was open that morning. Bertha Tardy, the owner, was at
19 work. Carmen Rigby, the bookkeeper, was there. Two other
20 young men were there, Robert Golden and Derrick Stewart.
21 They were there waiting on Sam Jones to come show them how to
22 load some furniture because neither one of them had even been
23 there long enough yet to know how they needed to load and
24 haul the furniture. So we have got four people that are
25 minding their own business at work, trying to make a living,
26 and someone comes in and kills them and takes the store's
27 money. And that's what we are here about today.

28 Now before I go into all the details, the Court has
29 told you you have got two options in this case as far as

Final Argument by Mr. Evans

1 guilty. The first is capital murder. The second is just
2 plain murder. It's distinguished by one element, and that is
3 the robbery. If you find that no money was taken from the
4 store, then that could be regular murder. But we have proven
5 clearly to you through Roxanne Ballard that money was, in
6 fact, taken.

7 Y'all saw the picture of the cash drawer. You
8 heard the testimony of Roxanne that there was always money in
9 that drawer. The drawer was always put in the safe and
10 locked up at night. That drawer was pulled out in the
11 morning. Normally it had \$300.00 in it. This particular
12 morning it had \$400.00 in it, and she explained to you how
13 she knew that, because of the receipts that were in there.
14 So there was money taken, and it was a robbery.

15 Now for a robbery, as the Judge has told you in the
16 instructions, what we must prove is that personal property of
17 hers or the store's was taken by violence to her body. It
18 can't be much more violent than being shot in the head.
19 Y'all have seen the pictures. You have heard Sam Jones
20 testify how when he went up there that morning to show these
21 two boys how to load the furniture, he walks in and found
22 this horrible scene. Derrick Stewart was still alive. He
23 was gurgling in his blood. He was trying to survive. The
24 other three were already dead, no doubt about it. Everybody
25 in the store had been shot in the head with a .380 automatic.
26 Robert Golden had been shot twice in the head.

27 You heard the testimony from Dr. Hayne. One of the
28 elements we must prove is how they were killed. There can be
29 no argument how they were killed. All four of these people

Final Argument by Mr. Evans

1 were killed by being shot in the head with a .380 automatic
2 pistol.

3 I told you on opening statements that we would
4 prove to you where that pistol came from, and we did. We
5 proved to you that that pistol came out of Doyle Simpson's,
6 the Defendant's uncle's car. And we proved that to
7 100 percent certainty because you have heard the testimony of
8 the expert. He compared the bullets that came out of the
9 store. He compared the bullets that came out of the post
10 where Doyle had test fired that gun. And we would have never
11 known about the bullets in that post if it hadn't been for
12 Doyle taking the officers out there to the post. He
13 cooperated and took them out there. He showed them where he
14 had fired the gun. They dug the bullets out of the post, and
15 they took those bullets along with the bullets out of the
16 crime scene, the bullets that went through these four
17 victims' heads. Some of them were still in their heads when
18 the autopsies were done. They were removed by Dr. Hayne.
19 The expert David Balash testified that he compared those
20 bullets at the scene to the bullets that were known to be
21 fired from Doyle's gun, and he told you to 100 percent
22 certainty they were fired from the same gun. So we have
23 proved to you what gun was used.

24 Now how does that tie to the Defendant? To start
25 with, we know from the testimony that that gun was in his car
26 that morning, locked in the glove compartment. We know that
27 his nephew knew that gun was in there, and now we know that
28 he was leaning against that car that morning about 7:15, the
29 car that the gun was stolen out of.

Final Argument by Mr. Evans

1 Now I want you to remember as I'm going through
2 these things, that in the statement he gave Jack Matthews, he
3 said he was never on the east side of Highway 51, nowhere on
4 the east side of Highway 51 that entire morning. Angelica is
5 on the east side of Highway 51. Where that car was is on the
6 east side of Highway 51. He is leaning against the car at
7 about 7:15 that the gun comes out of. What did she say? She
8 didn't say, I think that was him. She didn't say, I have
9 never seen this person before, but I believe it looked like
10 him. She said she knew him. She knew who he was that day.

11 What else did she say? She really didn't want to
12 get involved is why she didn't give his name that first day
13 because she was scared. But she told y'all that she knew it
14 was him just like she told the officers, just like she
15 pointed him out of the lineup. And when they showed her that
16 lineup, she didn't even have to walk over to the lineup
17 before she even went across the room. She pointed to him and
18 said, That is him right there. That is the person I have
19 known; that is the person that was at the car. I know him.
20 That's him.

21 We go on down. Lee Edward McChristian on Academy
22 Street; he sees him walk by his house a little bit later.
23 You know, all of these places are on the east side of Highway
24 51, and remember, he says he wasn't there. All these folks
25 are just lying on him.

26 I submit to you that because of good police work,
27 we can pinpoint his exact path from leaving his house, go to
28 Angelica, back to his house, and then back to town to Tardy
29 Furniture. I'm going to lay that out for you in a few

Final Argument by Mr. Evans

1 minutes, but you have seen it already. You have heard these
2 witnesses like Beneva Henry that have no reason to come in
3 here and lie on him; has known him all of her life; says yes,
4 I saw him walk by my house. He was headed toward town in the
5 same direction of Tardy Furniture. Yet he says he wasn't
6 ever there.

7 His statement is specific. As a matter of fact, he
8 says he didn't even get up until 9:30 that morning in his
9 statement. Now you have heard testimony from a defense
10 witness that oh, yeah, he was at his sister's house about
11 9:15. Look at his statement that he gave Jack Matthews. He
12 says he didn't even get up until 9:30. He says he went to
13 his sister's house at 11 or 12 something, and then he went to
14 the store after 12:00. That witness isn't even consistent
15 with his own statement that he gave.

16 This case was a terrible case because of four
17 people being killed, but it's a case that because of a good
18 law enforcement work, they were able to put it together.
19 Every possible person that they could find that might have
20 seen him was interviewed. And because of people in the
21 community being honest and saying yes, I saw him; some may
22 say, I don't want to be involved, but yes, I saw him. And
23 you heard them come on this stand and testify to that. Not
24 only can we put him at the car that the gun was taken out of
25 and knowing it was in there, we can put him going back to
26 town after he got the gun. Ms. Beneva Henry saw him at her
27 house walking down Campbell Street. Then right on down the
28 street from her house Mary Jeanette Fleming saw him. You
29 heard Mary Jeanette say that when she walked on up the street

Final Argument by Mr. Evans

1 after seeing him, Ms. Beneva Henry was still sitting on her
2 porch. And one thing I think she said was very important.
3 You know, everybody laughed; it was funny at the time, but
4 it's very important. She said it didn't matter if he was
5 naked; she knew who he was.

6 I think all of y'all have seen me throughout this
7 whole trial. You could probably say without a doubt that I
8 was here last Friday, but how many of you could say
9 specifically which suit or what clothes I was wearing that
10 Friday? You probably couldn't. I couldn't. I don't even
11 remember myself, but I remember seeing y'all here last
12 Friday. These witnesses went through what they saw. These
13 witnesses told what they knew.

14 Something else that was very important and very
15 good police work. These officers didn't just go in and tramp
16 all over the scene. They go in and they find evidence, and
17 they preserve it. The bloody tennis shoe tracks are very
18 important because they were left in blood. We know that
19 whoever did it did it at the time of the shootings. These
20 tracks are in blood on the floor, and you heard the expert,
21 Joe Andrews, say that those tracks are exactly consistent
22 with having been made by a pair of Fila Grant Hill II, 10 1/2
23 shoes, the same kind of shoes, the same kind of shoe box that
24 was found at the house he was living in.

25 Now his girlfriend wants to come into court and say
26 oh, he didn't wear a size ten and a half. He wore a size 11,
27 and that's exactly why we brought the shoes in that were
28 taken off his feet to show who was telling the truth. Jack
29 Matthews was telling the truth, and Joe Andrews was telling

Final Argument by Mr. Evans

1 the truth. Joe Andrews with the lab said he looked at those
2 other shoes; they were 10 1/2's. But she wants you to
3 believe he doesn't wear a 10 1/2; he wears an 11.

4 Something else, and Defense is going to argue oh,
5 it wasn't but one particle. Gunshot residue on his hand is
6 very important, on the back of his right hand. Now one thing
7 else that is very important and the experts, both experts
8 that have testified on that agree; you can say to 100 percent
9 certainty also, nothing in this world resembles gunshot
10 residue. When you have those same characteristics and same
11 shape, it can be nothing else in the world but gunshot
12 residue from a primer of a gun. You have heard the experts
13 testify. If you fire a gun with your right hand, where would
14 you expect to find the gunshot residue? On the back of your
15 right hand. And that's where it was.

16 We are talking about some four hours later. We are
17 lucky that they were still able to find some on his hand
18 because the experts say even if he hadn't washed his hands,
19 just sticking them in his pockets and all, he is going to
20 lose most of it. So we were lucky that we found that, but we
21 did, again by good police work because they, as soon as they
22 got an opportunity, they checked to see if it was on his
23 hands, and it was.

24 Porky Collins. Y'all heard his testimony even
25 though he is now deceased. We were able to read his
26 testimony into the record. That morning he saw the Defendant
27 on Front Street. Now they started saying things like well,
28 you said it looked like him. You said it could be him. I
29 pointed out numerous places in there where he said, That is

Final Argument by Mr. Evans

1 the man I saw. We have got him on Front Street walking in
2 the direction of the store. And then to me, another one of
3 the most important witnesses in the whole case is Clemmie
4 Fleming. Not only do we have him walking toward the store on
5 Front Street, where he says he never was, but we have got him
6 running, running wide open at the back of Tardy's heading
7 down the street, running away from the store. We have got
8 him going to the store. We have got him running away from
9 the store.

10 I want to go over just a few things with you.

11 (NOTE: Mr. Evans puts up easel with sketch pad in
12 front of the jury and writes on it.)

13 6:30 to 6:45 in the morning the day of the murders,
14 Elaine Gholston. She sees him sitting out on his porch.
15 Again, remember he says he didn't get up until 9:30. And she
16 can testify that she knew he wore Fila Grant Hills. She had
17 seen him wearing them before. Before that, approximately
18 four something, Patricia Hallmon saw him outside about 4:45.
19 7:15: Katherine Snow. She sees him at Angelica leaning up
20 against the car.

21 7:30 to 8 o'clock, sometime after 7:30: Edward Lee
22 McChristian. He sees him walking away from the direction of
23 Angelica coming down Academy Street. Yet he wasn't on that
24 side of the highway. That is another witness that is lying
25 on him.

26 Approximately 7:30: Patricia Hallmon. She sees him coming
27 back to his house. Yet according to him, he never left
28 there. And she knows that he had on Fila Grant Hills that
29 morning.

Final Argument by Mr. Evans

1 8 o'clock. Patricia sees him leave again. That is when he
2 is heading back to the store. This first trip is when he
3 goes to get the gun. He goes back home. Then he leaves his
4 house again and heads back downtown to Tardy's.

5 9:00 to 9:45: That's when Ms. Beneva Henry, she sees him
6 walk by her house. After 9 o'clock right down the street in
7 sight of where each other would have seen him, Mary Jeanette
8 Fleming. She sees him right down the street from Ms. Beneva
9 Henry's house.

10 Somewhere around 9:30: Porky Collins sees him on Front
11 Street walking in the direction of Tardy's.

12 Approximately 10 o'clock: Clemmie Fleming sees him running
13 away from Tardy's.

14 10:30: Chief Hargrove walks in the store and sees the body.
15 There is the time line right there that shows you exactly
16 what happened that day.

17 Ladies and gentlemen, this is a case that you have
18 a couple of options, but if you follow the instructions that
19 the Judge gives you, there can only be one verdict in this
20 case, and that is that the Defendant is guilty of capital
21 murder because he did, in fact, take the money from the
22 store, and that's what makes it a capital murder.

23 Everyone involved in this case did an excellent job
24 of helping preserve the crime scene, the evidence that was
25 there, from Sam Jones, who walked in and found them, Chief
26 Hargrove. Chief Hargrove did an excellent job of protecting
27 the scene until other investigators from the crime lab got
28 there. You heard Melissa Schoene; she was at the time the
29 expert with the state crime lab. She went step by step with

Final Argument by Mr. Evans

1 you through what was done to protect the evidence. She is
2 the one that took the photographs of the bloody shoe prints
3 that Joe Andrews was able to match. She, excuse me -- she is
4 the one that recovered the hulls, the projectiles and the
5 other evidence at the scene. And you have also heard and
6 really, the main way you heard it was from the Defendant's
7 own statement. He was let go from Tardy's Furniture. He had
8 hauled some batteries. He had caused them to fall off the
9 truck and was going to have to pay for them. He had worked
10 four days, and other than the \$30.00 advance he had gotten,
11 he wasn't going to get paid for those four days. In his
12 statement, I don't remember the number of times -- you can
13 look back through it -- but if I'm not mistaken, it says
14 something about, about four different times that he had
15 called Ms. Tardy during that time. You can look at the
16 statement. You don't have to go by my memory. He was mad
17 because he wasn't going to get that paycheck.

18 He didn't go back in because she wasn't going to
19 give him that paycheck, and he sat there and stewed over it
20 for several days. He went back down to Tardy's. He shot
21 these four people after he got the gun out of his uncle's
22 vehicle, and he took the money out of the cash register, the
23 money that he thought he was owed. He took that money.

24 Sheriff Thornburg. Sheriff Thornburg was involved
25 in helping to prove what gun was used. He is one of the ones
26 that went and dug the bullet, two bullets out of the post
27 where Doyle had shot it. You heard him testify. You heard
28 Jack Matthews testify about how that was done. That was good
29 police work. That was things that a lot of times would be

Final Argument by Mr. Evans

1 overlooked, but they were thinking. They were trying to say
2 well, if the gun has been disposed of, how can we prove what
3 murder weapon was used, and they did. They proved to
4 100 percent certainty what weapon was used without even
5 recovering the weapon, and that is good work. Sheriff
6 Thornburg was also one of the ones involved in recovering the
7 Fila Grant Hill II tennis shoe box. The shoes may be gone,
8 but we have got the box they were in. So we know that those
9 shoes were there, the same kind of shoes that Joe Andrews has
10 said left those bloody shoe prints.

11 The Defense put on the Defendant's girlfriend.
12 Basically, what she said was, I left going to work that
13 morning, and I didn't see him again until that evening. I
14 kept bows in that box. That is what the box was doing there.
15 I kept Christmas bows in it.

16 Y'all heard Sheriff Thornburg, and you are the ones
17 that can determine who has a reason to tell the truth and who
18 has a reason to lie. Sheriff Thornburg said it wasn't
19 nothing in that box when he first saw it, nothing. But they
20 were sharp enough -- as you have heard from Jack and Joe
21 Andrews, again good police work. They started that day going
22 to shoe stores, doing different things to determine. They
23 wanted to know what kind of shoe left this print, what size
24 shoe left this print. Which direction do we need to go from
25 here? And they didn't just do a little and stop. They
26 followed up on it all the way, all the way to the point that
27 the Fila factory sent Joe Andrews the exact same kind of
28 soles that would have been on the shoes in that box. He
29 explained to you how he was able to match it.

Final Argument by Mr. Evans

1 You also heard testimony from somebody else. You
2 heard testimony from Odell Hallmon. That is Patricia's
3 brother. You heard how the Defendant asked him to lie, to
4 make up a story to try to discredit Patricia because she was
5 such a good witness against him. But remember what all she
6 could say. She could say he wore Fila Grant Hills. He had
7 them on that day. She saw him at 4:45. She saw him leave
8 his house at 7:30 -- no, saw him come back to his house at
9 7:30; saw him leave the house again at 8 o'clock. It's very
10 obvious why he wanted to discredit her.

11 But what did Odell tell you? He said, yeah, he
12 asked me to make up a statement to help him lie and discredit
13 my sister, but it wasn't true. And I asked him, Did he ever
14 say anything to you about the crime? What did he say? Yeah,
15 he told me he killed the people in the store there. Asked
16 him to lie and admitted to him that he did it.

17 Ladies and gentlemen, as the Judge told you and I
18 told you, the burden of proof is on the State of Mississippi
19 in this case or any case, same burden of proof whether it's a
20 grand larceny or a capital murder. That burden is only
21 beyond a reasonable doubt. That does not mean that you have
22 to have a videotape of the crime scene to convict. That
23 means if we have convinced a reasonable jury beyond a
24 reasonable doubt that he is guilty, he is guilty.

25 I submit to you that we have gone further than
26 that. When you look at the evidence that we have given the
27 jury, you look at all of the witnesses that have put him in
28 these different places -- going to where the gun was, going
29 away from where the gun was, walking toward town, in front of

Final Arguments by Evans - by Carter

1 Tardy's, running away from the crime scene, having the kind
2 of shoes that left the tracks, having gunshot residue on his
3 hand, telling folks, telling Odell Hallmon that he killed the
4 people in the store; ladies and gentlemen, this Defendant is
5 guilty of capital murder. The reason he is guilty is because
6 he went in that store and killed four people on July 16,
7 1996. And we are asking you when you go back in the jury
8 room to deliberate, to return a verdict of guilty of capital
9 murder on all four charges because that's what he is guilty
10 of. Thank you, Your Honor.

11 (Mr. Carter puts large photographs of Doyle
12 Simpson's car on easel in front of the jury.)

13 FINAL ARGUMENT BY MR. CARTER:

14 Good afternoon. The only excellence that went on
15 at that crime scene was done by Melissa Schoene. And the
16 only other excellence that went on this case was done by the
17 Mississippi Crime Lab. Sheriff Thornburg said this is
18 Doyle's car. The car is brown. And the good Lord shines
19 this perfect shadow on this car from right here to right
20 here. And that is not another color, but it is perfect
21 sunlight; a shadow is also underneath this car. It would
22 take an absolute blind person to not see that this car is two
23 colors. You have to lie to say that car is one color.

24 Mr. Evans apparently would believe anything. He
25 believes his witnesses, despite how they testified. He still
26 believes them. I will make every effort to talk slow -- I
27 have a habit of talking fast -- so that you can understand
28 me. The prosecution wants you to believe that it was a clear
29 and sunny day, and the sky is blue, but they can't explain

Final Argument by Mr. Carter

1 the clouds or the constant rainfall. The prosecution wants
2 you to believe it was a clear day and it was sunny, and the
3 sky was blue. But you know it can't be a clear day and it
4 can't be sunny if it keeps raining, and you see clouds
5 everywhere. And I'm not gullible enough to believe that, and
6 I don't believe that you are because we know that can't
7 happen.

8 It doesn't matter how many times you repeat a lie.
9 A lie is a lie the first time; it's a lie if you tell it 20
10 times, if you tell it a hundred times. And repeating the
11 same lie over and over does not matter. You are here today
12 facing the awesome responsibility of deciding Mr. Flowers'
13 fate. And I have awesome responsibility of representing him,
14 and it certainly is an awesome responsibility.

15 Mr. Flowers is accused of killing four people, and
16 the death of four people is enough to affect anybody. I told
17 you when I heard about this case, I said I didn't want no
18 part of it. And I'm frankly amazed that I'm the lawyer, but
19 once I got the case and I read the facts, I didn't have any
20 reticence from that time on. It is natural to feel great
21 sympathy and empathy for the victims, victims and their
22 families of the victims because that was a horrific crime
23 scene, no doubt about it. You can't take that away. I won't
24 even waste my time trying because I'm too humane for that.

25 But your job is not to bring relief to the
26 families. That is not your job. Your job is to listen to
27 the evidence and decide guilt or innocence of Mr. Flowers.
28 Your job is to decide whether Mr. Evans proved guilt beyond a
29 reasonable doubt or he didn't prove it. The prosecutors' job

Final Argument by Mr. Carter

1 is to do justice, not to just seek a conviction. That is
2 their charge, and while it's not my charge, I make an effort
3 to seek justice also because I believe a trial is a search
4 for the truth. And the truth just doesn't run out. You have
5 to knock it out sometimes. You have to hammer it out and
6 beat it out of people. That's how you get the truth. That's
7 why you have cross-examination because people will come and
8 lie.

9 I would be quite surprised if you didn't feel
10 pressure, a lot of pressure because you have got the great
11 responsibility. But you have to try to make your decision
12 based on the evidence and not on any outside influences.
13 That is your charge. That's what you said you could do. I
14 believe it takes great courage and conviction to sit in
15 judgment on this case because there is so much temptation;
16 there is so much hurt involved in this case. Jury duty is
17 not for the scary and the faint of heart. I have been a
18 lawyer for over 20 years and I have talked to a lot of
19 people, a lot of jurors, and I have learned that people want
20 people just like them to decide their fate.

21 And I have also learned that almost everybody has
22 some fear of people unlike them deciding their fate. And
23 when I speak of unlike, I'm speaking of political parties, a
24 lot of things, races, sexes, social, economic groups, and so
25 on. And as a lawyer, we try to make some effort to
26 accommodate a person, but most of all, we are looking for a
27 fair and impartial jury. That is most of all what I think
28 everybody wants. Only you know whether you can be fair and
29 impartial, and I have no reason to doubt it. I pray, I beg

Final Argument by Mr. Carter

1 you to be fair and impartial. I have no reason to doubt it.

2 Nobody has told you this, but you are the most
3 powerful entity in this courtroom right now. You have more
4 power than the Judge, more power than me, and that may shock
5 you. More power than Mr. Evans; that may shock you because
6 you decide what happens to Mr. Flowers. And you don't get a
7 chance to go to law school like I did, like Mr. Evans did,
8 like the Judge did, like Mr. de Gruy and Ms. Ferraro and like
9 Mr. Hill. You show up one day and you get picked, and this
10 great responsibility is thrown upon you, and you have got to
11 handle it.

12 I know you have heard this before, but with great
13 power comes great responsibility because nobody wants to be
14 accused of abusing responsibility, especially a great
15 responsibility on a case like this. So you should be asking
16 yourself, How can I be fair? How can I do what is right?
17 How can I not abuse this responsibility? How can I make sure
18 that I make my decision on the evidence and not on anything
19 else?

20 The prosecution has to prove their case. Mr.
21 Fleming-- Mr. Flowers doesn't have to prove anything. The
22 Judge has told you that that is just the way it is. That is
23 the way our system works. And if Mr. Evans doesn't do his
24 job, you don't have to excuse him. You shouldn't excuse him.
25 You don't have to make excuses for him. Our system depends
26 on ordinary citizens to decide what happens to us; ordinary
27 citizens just like you, so you don't need no law degree. You
28 don't need to be taught how to do this. You just have, need
29 the willingness to do what is right, to follow the

Final Argument by Mr. Carter

1 instructions to do your job. That's all we could ask.

2 I realize the death of four people is a hard thing
3 to reconcile. I mean I know it is. When we hear of crime, I
4 want to tell you a little something. Every time I hear of a
5 crime, a horrendous crime, I get mad, and I wish bad things
6 upon the person who did it, and I'm a lawyer and been doing
7 it a long time. And I have to make myself stand back and
8 realize I don't even know the facts. I don't know what
9 happened. I just heard of something. And although this is a
10 horrendous crime, a horrendous crime and I know that it has
11 to affect you greatly, you have got to step back and be fair
12 and be objective and make a decision based on the evidence.
13 You can't just act on emotion.

14 This case is not about me and Mr. Evans. We just
15 happened to be the fortunate or unfortunate people that
16 happen to be here. It's not about the prosecution versus the
17 defense. It's not necessarily about good versus evil. This
18 case is about justice and proof beyond a reasonable doubt or
19 the lack of proof beyond a reasonable doubt.

20 Now let's talk about the facts of the case. Curtis
21 Flowers is charged. The government called, I believe 19
22 people. They called Sam Jones, Chief Johnny Hargrove, Barry
23 Eskridge, Dr. Steven Hayne, Melissa Schoene, Bill Thornburg,
24 David Balash, Katherine Snow, Beneva Henry, Edward
25 McChristian, Doyle Simpson, Elaine Gholston, Mary Jeanette
26 Fleming, Clemmie Fleming, Patricia Hallmon Sullivan, Charles
27 "Porky" Collins, Jack Matthews, Roxanne Ballard, Odell
28 Hallmon, and Joe Andrews and Mr. Keenum; I can't think of his
29 first name. And we called Essa Ruth Campbell, Connie Moore,

Final Argument by Mr. Carter

Billy Glover, Latarsha Blissett, Mary Fleming, Sam Jones
[sic], and Mike McSparrin.

Before we get there though, I told you from the beginning that they didn't have a single person who could say that they saw Mr. Flowers go in and come out of that store, and they still haven't. After all of this, they still haven't because they don't have. And despite all the good work that Dr. Hayne and Melissa Schoene, Mr. Andrews did, not a single one of those experts can say or performed any work that showed that Curtis Flowers went in that store and committed those murders, not a single one of them.

I told you in the opening statements this case is not about who did it; it's about who could have done it. And all they have shown you is who could have; that he was one of several persons who could have, but they cannot show you that he did, in fact, do it. I told you; I knew they couldn't.

Let's talk about what Mr. Jones said. Mr. Jones came to Tardy's that morning. He was in the front of the store, the side of the store, back behind the store. He drove there. He never saw anybody running, walking, or standing anywhere nearby Tardy's, and he is the person that found the parties. And he drove down Summit, Church, Carrollton; yet he never saw anything. He saw the fingerprints when he went in the second time.

Chief Johnny Hargrove apparently didn't make any notes of what he saw and what he found. He relied on his memory, a dangerous thing because the memory, memory fades. That's just the way it is. No list of people who came in and went out. They certainly never showed me one that he made.

Final Argument by Mr. Carter

1 And there is some question about whether he checked any
2 footprints or not. I believe he said he did, but if I'm not
3 mistaken, Mr. Eskridge got up and said he thinks his got
4 checked later by somebody else, and the EMT's were checked
5 later by somebody, not by Mr. Hargrove. But I believe, if
6 I'm not mistaken -- rely on your own judgment, but I believe
7 he said he checked them. If I'm wrong, I apologize.

8 And there was one picture where I asked every one
9 of those police officers, Who are those people standing out
10 front at that tape? Not a single one of them knew who was
11 there because they made no lists. They want you to -- they
12 are going to come in here and want you to believe their
13 memories eight years ago. That's why you write things down.
14 You have got to be a moron to think that you don't have to
15 make notes so that you can memorialize what happened and just
16 rely on your memory. Yet somebody's life is hanging in the
17 balance.

18 Mr. Eskridge said no one checked his shoes at the
19 scene, but maybe later; didn't see anyone check the EMT's
20 shoes. In fact, he walked around and apparently helped
21 Mr. Hargrove look around, which I think is a noble thing to
22 do. I mean if you are courageous enough to do that
23 considering, you know, the crime scene.

24 Dr. Hayne came here and explained to you how these
25 people died. I mean I know that was a touching, hurting
26 thing. It affected me too and -- but you have got to put
27 that in perspective, and that is not to say that I am
28 discounting the murders because I can't do that. I wouldn't
29 be stupid enough and inhumane enough to try to do that.

Final Argument by Mr. Carter

1 Melissa Schoene said she lifted fingerprints, I
2 think, from the store and from the car. She said the
3 contents of the safe were neat and orderly, and no evidence
4 nobody went through those. She photographed the keys off of
5 Ms. Rigby's hand, but they were apparently on her hand at
6 some point, which means somebody moved them, kicked them, or
7 did something to move them around in there, which means the
8 crime scene wasn't really protected like they claim it was
9 because had it been protected, the keys would have still been
10 on her hand.

11 And there was never any tape put up in the building
12 to mark off these tracks, but I'm glad they were able to get
13 them. They did a decent job considering that, I would argue.
14 The money was still in Mr. Rigby's purse, still in
15 Mr. Golden's pocket, and I believe still in Ms. Tardy's
16 purse. And Mr. Flowers' check was still left there. They
17 make all this fuss about Mr. Flowers' check. We saw the
18 check sitting right there by the phone. There was never any
19 proof. Did you see anything written on that check where she
20 was going to take that check or deduct that check? I mean
21 there is no real expressed proof that that really, that she
22 was going to actually take it. Of course, she told Mr.
23 Flowers that, but as far as looking at the check and making a
24 big thing out of it, the check-- all the check means is that
25 he worked there at some point, which we know.

26 Mr. Thornburg. No one told him to look out for the
27 footprints. He saw the footprints on his own. He went to
28 Connie's house with Jerry Butler looking for gym shoes. He
29 saw the shoe box, but he didn't get it, and he didn't check

Final Argument by Mr. Carter

1 for any clothes or search the house or anything even though
2 this man was a suspect apparently, but that is still
3 excellent police work according to Mr. Evans. Didn't look
4 for the gun or anything else; went back a second time but
5 didn't even go in and get the box. The lady went and got the
6 box and came and brought it to him.

7 And they said they knew kind of early on that it
8 was Grant Hill Fila shoes. If they knew it was Grant Hill
9 Fila shoes that left that print, why didn't they get the box
10 earlier? They probably didn't know. He saw Emmett Simpson
11 running. He said Emmett was perspiring. Doyle lied to him
12 about where he got the gun from.

13 We had David Balash. David Balash said, he
14 explained to you how you can get gunshot residue. And he
15 also said you can get it a lot of ways other than shooting a
16 gun. As a matter of fact, I believe he said, if I'm not
17 mistaken -- rely on your own memory -- that he wouldn't
18 conclude of any person that has fired a weapon unless he sees
19 more than 100 particles, not just one like Mr. Andrews found.
20 He also said that gunshot residue can easily be transferred
21 from shaking hands, people with ink pens and various other
22 things that has gunshot residue on it. And he said there is
23 no test that can show that a person absolutely fired a gun.

24 Katherine Snow claimed she was afraid to get
25 involved. Afraid of what? I asked her. She couldn't tell
26 even tell us. She was just afraid, and she never told
27 anybody that before as far as I know. But all of a sudden
28 she is afraid when she is up there, when she is being cross-
29 examined. Admitted that she knew Curtis before this and saw

Final Argument by Mr. Carter

1 Curtis out there. She talked to the police three times, I
2 believe, before she told the police that she saw Curtis out
3 there. By the time she talked to the police and told them
4 about Curtis, the reward was available. She admitted that.
5 Said she saw a person that was 5'3" to 5'5" with a white
6 shirt; didn't notice shoes or pants. She didn't tell Doyle
7 she saw Curtis either. She just gave a description.

8 Then we have got Ms. Henry. Ms. Henry came here
9 and she said she saw Mr. Flowers. I don't doubt that she
10 might have seen Mr. Flowers at some point; I really don't,
11 because people -- she admits that she had seen him many times
12 walking. She said he had on white shorts on that occasion,
13 and he was walking on Campbell. Maybe that happened at some
14 point, but she didn't know where he went. She couldn't say
15 he went to Tardy's. They said he was walking normally,
16 didn't see anything abnormal about him.

17 Mr. McChristian came in, Edward McChristian. He
18 said he saw Curtis walking on South Academy. He couldn't say
19 anything about the clothing; said it was common for people to
20 walk that way all the time. He saw Curtis between 7:30 and
21 8:00, right around the same time that Katherine Snow saw him,
22 so he was doing a lot of moving around, or either he was at
23 two places at one time.

24 Doyle Simpson put the gun in his glove box the
25 night before the murders. He told us that and told us that
26 he never told Curtis he put the gun in there. Yet Mr. Evans
27 said Curtis knew the gun was in there. It is all right for
28 Mr. Evans to say because he didn't need facts to say those
29 kind of things. He just wants to say that and hope that you

Final Argument by Mr. Carter

1 will believe it. He said he went to his car about 9:15 to
2 get his breakfast, I believe, went back around 10:25, I
3 believe, to let his windows down. He didn't notice the gun
4 missing until the third time. He was going to pick up
5 lunches, I believe. He admitted that there was about a 45
6 minute period of time when he wasn't at work. He was
7 unaccounted for from my perspective. He lied about where he
8 purchased the gun; called his brother and tried to get his
9 brother to lie for him. Katherine Snow told him that the
10 person she saw, I think it was short, heavy, had a hat on
11 with white shirt, but gave no name. And she saw the person
12 around 7:15, I believe.

13 And Doyle couldn't help, he couldn't explain how
14 lying about the gun was supposed to help Curtis. I mean I
15 don't understand that, and I can understand why it might help
16 him because he claimed he was being harassed. But I don't
17 see how it matters whether you got the gun from your brother
18 or you got it from anybody else. I mean the reason he lied
19 about that, I just don't understand. And he didn't
20 sufficiently explain it to me.

21 Okay, we had Elaine Gholston who came in, said she
22 saw Curtis wearing Grant Hill Filas, but I asked her another
23 question about what she told somebody else. She said it was
24 months and months before the killings; couldn't remember
25 anything else he had on when she saw him with these tennis
26 shoes on; had known him for about seven years and couldn't
27 remember any other type of shoes that he had on, so I guess
28 he had them for seven years, all he wore. But she only saw
29 them one time. Couldn't remember what they specifically

Final Argument by Mr. Carter

1 looked like or how he wore them. And she said she never saw
2 Patricia Hallmon walking early in the morning.

3 Then we had Mary Jeanette Fleming. I don't know
4 what to say about her except I know you remember her. And I
5 do too and I will never forget her probably. But she gave
6 one description in court about what she said he had on, but
7 if you take the evidence back in the room with you, you are
8 going to find out that she gave a different description when
9 the police talked to her. I tried to get her to admit it,
10 but she wouldn't do it. The statement is in evidence. Read
11 it and you will see where she made two different statements
12 about what he had on.

13 Then we had Clemmie Fleming, who said she hired
14 Mr. Harris to take her to Tardy's. She said they went there,
15 and they sat out front. And although she had a bill to pay,
16 she was too sick to go in and pay it, but she didn't go to
17 the doctor. She went over to her sister's house and didn't
18 tell her sister she was sick. And she owed for furniture at
19 Tardy's which she has never paid to this day. Tardy's no
20 longer calls her or go to ask her for the money. The debt
21 was forgiven, just like Latarsha Blissett said because she
22 testified in a helpful fashion.

23 And she said Curtis was on the left side of the
24 vehicle. She had to look across Mr. Harris to see him, I
25 believe. And he drove on and this person, Mr. Flowers was
26 running so fast that apparently he got to 51 before they
27 could drive to 51.

28 Patricia Hallmon. She saw Curtis on the porch with
29 blue shorts, smoking a cigarette around 4:45. She saw him

Final Argument by Mr. Carter

1 again about 7:30 running from over the hill with black nylon
2 pants that zip up; stayed in the house 20 minutes; left again
3 with the same attire on, but didn't see him return; never saw
4 a weapon or any blood or any evidence of any crime. And
5 apparently, she saw Curtis right around the same time that,
6 or near the same time that Mr. McChristian saw him.

7 Then we had Charles "Porky" Collins, whose
8 testimony you heard read. It was long, and hopefully, you
9 were able to listen to it and it didn't unnecessarily
10 distract you. I realize it is probably not as exciting as
11 having a witness testify, hearing us read something. He said
12 he saw two men in front of Tardy's, said they were medium
13 skin. That's the first thing he said. He said he only got a
14 brief or a split second look at one of the men. He didn't
15 see the other one's face, and when he was first showed a
16 lineup, he picked Doyle Simpson out. Later on, after the
17 good doctor, Mr. Johnson, finished with him, he picked out
18 Curtis Flowers.

19 Now if you remember well, Mr. Collins admitted or
20 he was shown through cross-examination that he had a bad
21 memory, and his perception might have been skewed. He said
22 he saw these two men making hand gestures, thought they were
23 fixing to fight, couldn't identify any clothing or other
24 definite details of the people.

25 Then we had Mr. Jack Matthews, who relied on his
26 great memory too, because that's all you need apparently. He
27 failed to photograph several things. He said he saw the keys
28 on Ms. Rigby's hand. He interviewed Mary Jeanette Fleming.
29 He pointed out the inconsistency in Curtis Flowers'

Final Argument by Mr. Carter

1 statement. Curtis gave him two statements. The first time
2 he came he gave them one, according to Mr. Matthews. The
3 second time he saw him he gave him another. Curtis Flowers
4 probably didn't know he was a suspect the first time the
5 police called him. But when they called him back again, I
6 think he knew he was a suspect. Any young man would have
7 been tempted, especially if they started telling you when a
8 crime occurred and what happened, to try to curtail or change
9 your testimony to make it fit whatever they are talking about
10 because he didn't want to be charged. That is just a fact.
11 They can put whatever spin they want to put on it. I can't
12 stop them; I won't even try. But if Mr. Flowers killed the
13 people, then he know what time he killed them. He could have
14 told them, give them the right information the first time.
15 He wouldn't have had to change it because if he had been
16 there, he would have known when it occurred.

17 And Mr. Matthews also admitted that Doyle lied to
18 him; admitted that they never found the tennis shoes; never
19 found the gun; never found the clothing. And I don't have
20 anything bad to say about them not finding this, those items
21 because I believe if they could have found them, they would
22 have, and they tried probably. But he couldn't identify some
23 of the people at the scene also because he was relying on his
24 memory instead of making notes like he should have been
25 doing.

26 And ladies and gentlemen, you had Odell Hallmon to
27 come here, the snitch, the informant, and Mr. Evans believes
28 him too although he knows this man has testified and given
29 information differently before; although he knows Odell had

Final Argument by Mr. Carter

1 written a letter to Mr. Flowers' mother apologizing to her
2 for lying, for getting his sister to lie; although he knows
3 Mr. Flowers [sic] has denied on two tapes that Curtis Flowers
4 told him that he killed these people. But Mr. Evans put him
5 up here anyway. He doesn't care. That is not him that is on
6 trial. But you notice Odell didn't provide any detail as to
7 when, where, how or why those murders occurred that Mr.
8 Flowers supposedly told him about.

9 And the Judge gave you a cautionary instruction
10 about how to view Mr. Hallmon's testimony because the man is
11 a snitch. He will do anything for some kind of favor, and I
12 do mean anything. And don't forget where he was living,
13 where he lives now.

14 Now Mr. Joe Andrews, the shoe print guy, did good
15 work from what I could see, and he said that that shoe print
16 was left. He proved scientifically that that print that was
17 left there was done by a Fila that was either 10, 11, or a
18 10 1/2. But even he doesn't know who committed those
19 murders, and he absolutely cannot say Mr. Flowers did it. He
20 admitted that.

21 And he found this one particle of gunshot residue,
22 the smallest amount that the microscope will pick up
23 apparently and they can still say that it's gunshot residue.
24 But even he admits you can get, gunshot residue is easily
25 transferred, and you can get it almost any kind of way. And
26 he said that you can never say absolutely a person fired a
27 gun. Now he sent the shoebox on for fingerprints to be taken
28 of it.

29 Then we had Ms. Campbell to come in here, who is

Final Argument by Mr. Carter

1 Doyle Simpson's sister, who had this car sitting at her house
2 more times than she can count, who told you what color the
3 car is, a car that you can see with your own eyes what color
4 it is. And she said she saw her brother driving his car
5 somewhere between 9:00 and 10:00. She was able to see that.
6 And we had Connie Moore who came in and said she bought her
7 son some Fila Grant Hill shoes. In fact, she said she bought
8 two pair. And Mr. Evans couldn't bring anybody here and
9 controvert her testimony, so he tried to talk to her in a
10 condescending manner, tried to make her look like a liar
11 without any proof. She said she had three sons. She had a
12 son Marcus who had left to live with his daddy; had another
13 son named Lemarcus who was living there, and they claimed
14 they checked his shoe and it was size seven. Mr. Evans is
15 going to stand up here and try to make you think that
16 Lemarcus was Marcus. They are two different people.

17 And we had Billy Glover to come in here. Billy
18 Glover said he saw Mr. Flowers because it rained that morning
19 and they know he wasn't going to be able to work because they
20 worked outside, so he went over to Priscilla's house, and
21 Mr. Flowers came by there about 9:15. They talked about 15
22 or 20 minutes.

23 We had Latarsha Blissett to come here. The child
24 was in high school, and Mr. Johnson, the great Mr. Johnson,
25 John Johnson went and got her, picked her up, didn't even
26 tell her parents, her mom and dad; put her in a car and took
27 her to Greenville and interviewing this child and asking her
28 what \$30,000 can do. That will get you a mobile home. That
29 is low down. And Clemmie also told her that she lied and

Final Argument by Mr. Carter

1 that she would tell the truth and that she told just to get
2 her furniture paid for.

3 Now we have Mary Ella Fleming, who came here and
4 said her sister came to her house, and her sister didn't say
5 anything about being down at Tardy's or seeing anything
6 before she got in the car and took her sister back down
7 there, and they realized that something had happened down
8 there. Her own sister.

9 And we had Mr. Roy Harris to come in, a man that
10 doesn't hear good and a man that is illiterate, I hate to
11 say, said he couldn't read. And he talked to Mr. Johnson; he
12 talked to him twice. He talked to Mr. Johnson the first
13 time; Mr. Johnson did not tape the statement, and he did not
14 write it out because he didn't want to hear what he had to
15 say the first time. But he called him back later after he
16 had talked to Clemmie Fleming, and he realized what Clemmie
17 Fleming said. Then he goes and get Mr. Harris back in there
18 and make Mr. Harris say what Clemmie Fleming said. That's
19 what he did. That is what I know he did. I'm sorry I
20 couldn't be there so I could prove it any better, but I know
21 that is what happened.

22 And out of all the statements Mr. Evans pulled up
23 and said you said this on this day, and you said this on that
24 day, he never wanted to talk about that first statement that
25 Mr. Harris gave though because he knows Mr. Harris told
26 Johnson that he went down there twice. The first time he was
27 by himself, and that's when he saw a guy running, and he gave
28 a description of the guy he running, he saw running, a light
29 skinned guy. That is oldest trick in the world. If you are

Final Argument by Mr. Carter

1 telling me something I don't want to hear, I'm not going to
2 write it down. I'm not going to take it, but when I get you
3 to say what I want you to say, I'm going to tape it because I
4 want some record of it. And you don't have to believe what
5 I'm saying, but I know I'm right, and I know that is what
6 happened. Use your own judgment; you can ignore me with
7 respect to that because that is just my opinion.

8 Who can you trust if you can't trust the police, if
9 the police would lie? The police has a lot of power, and
10 Mr. Evans has a lot of power. I mean they can go and flash
11 that badge and make a person come out of the house and talk
12 to them. They can make a person go down to the precinct and
13 talk to them whether you want to go or not. I can't do that
14 as a defense attorney. But they can do it, and they should
15 not abuse that power.

16 And then we had Larry Keenum, the person that is
17 supposed to account for Doyle Simpson's whereabouts. Doyle
18 Simpson was a possible suspect. They never ruled Doyle
19 Simpson out. You know how they rule him out? They rule him
20 out on one of his co-workers, a guy named Mr. Keenum. They
21 didn't even get a statement from Mr. Keenum. They have
22 nothing in writing, nothing on tape, nothing to prove that
23 this man was actually there. Then they are going to bring
24 him here and let him testify from his memory that he was
25 there, that he remembered. What kind of alibi is that? You
26 can't even prove it. Anybody can come in and lie and say
27 that. And they know it is wrong.

28 And we had Mike McSparrin to come here and say he
29 tested the box and various other things, and he found no

Final Argument by Mr. Carter

scientific evidence to connect Mr. Flowers to this crime.

Ladies and gentlemen, the people either saw Mr. Flowers on different days, or they are lying to get money. I can't be real sure what it is. I am sure some of them are lying to get money, to get advantages. I told you in the beginning that you would find a shotty and incompetent investigation to some degree, and you would find witness intimidation, and I believe the facts will bear every single one of those out. And I also told you that this case was going to be about who could have done it and not who did it, and I believe the facts have beared that out too.

If they saw Mr. Flowers on the same day, why do we have so many different clothing descriptions of what he had on? And we know Mr. Flowers didn't likely outrun that truck. I don't really know why Mr. Flowers changed his story. As a lawyer, I don't get a chance to see what happens. All I do is the best I can to try to bring out the truth during the trial. That's all I can do, and try to put a story together based on what happened. I would never stand before you and tell you absolutely that I know what happened because I don't know. I am unlike Mr. Evans. Mr. Evans can do that, but Mr. Evans is not there either. He doesn't see it either. I don't believe that the prosecution has proved their case by trustworthy and reliable evidence. I just can't see that.

Now Mr. Evans gets a chance to come behind me, and I don't care what I say to you, he is going to come up behind me, and he is going to say something different. And he is going to try to make it look like I can't possibly know what I'm talking about, but I have made my best effort to be

Final Arguments by Mr. Carter - by Mr. de Gruy

1 honest and be clear to you. It is important that a police
2 investigation be objective, that it be based on trustworthy
3 and reliable evidence. Otherwise the possibility of error is
4 so great, and with this kind of case, the punishment is just
5 too great to make mistakes, to cavalierly judge somebody;
6 it's too great to not care.

7 You have been forced to rely to a large degree on
8 the memories of people rather than written proof that was
9 collected and made way back around the time it occurred.
10 That is not your fault, and it's not my fault either. I
11 don't know if I have ever heard anybody say they checked
12 Doyle Simpson's shoes or Emmett Simpson's shoes. I don't
13 know if I have heard anybody say they checked Doyle Simpson's
14 house for evidence, or either Emmett Simpson. Maybe they
15 did, but I don't remember hearing anybody. But they zeroed
16 in on Mr. Flowers and said to hell with everybody else more
17 or less. That's the way it looks to me.

18 Mr. Flowers doesn't have to prove anything. That
19 is just the way it is. Mr. Evans has the burden of proof. I
20 thank you, and I believe that you are honest and fair and
21 courageous enough to go back and do the right thing.

22 **BY MR. DE GRUY:** May it please the Court.

23 FINAL ARGUMENT BY MR. DE GRUY:

24 Good afternoon. I know y'all have been here a long
25 time just this afternoon, and you have certainly been here a
26 long time since we got started last week. And I think you
27 will recall when we spoke last week, we were telling you
28 during jury selection that what we were looking for were
29 fair, objective people. I think you will recall, some of you

Final Argument by Mr. de Gruy

1 started on the first day. Some of you started on Wednesday
2 and even on Thursday. From well over 300 people, it came
3 down to you. We trusted you from what you were telling us,
4 and we are about to entrust you in the case, with the case.
5 And I'm going to have to sit down, and I promise you; I'm not
6 going to be here very long. But I think you can understand
7 why I'm a little reluctant to just sit down leaving something
8 unsaid.

9 I know that y'all have been paying attention, and
10 we truly appreciate that. And I have noticed the note
11 taking, and I know you are interested in this case and
12 interested in the facts. And we know and we trust that you
13 are going to go back into the jury room and carefully do your
14 best to remember this evidence. And you also told us during
15 the jury selection process, and it's just as important, that
16 you would follow the law that was given to you by the Judge.
17 And I'm going to just tell you; I'm not going to read back
18 through it. And I noticed y'all were paying attention when
19 he read it. And you know that you get to take it back with
20 you, and so I am asking you to read through the law
21 carefully.

22 I would just like to take just a couple of moments
23 to go through some of these instructions that you will have
24 with you and relate them to the facts that we heard. And to
25 start with, jury instruction number 1. It's a lengthy
26 instruction. It is almost three pages long, and it basically
27 goes back through everything we talked about for four days of
28 jury selection - what we asked if you could do and what you
29 assured us you could. It comes down to the final paragraph

Final Argument by Mr. de Gruy

1 that is, I think what explains to you that awesome
2 responsibility that Mr. Carter was talking about.

3 The ultimate decision you make in this case is your
4 decision, each one of you. You talk among each other. You
5 discuss; I have no doubt you will argue. But ultimately,
6 each one of you owes everyone else the respect that you want
7 in the decision. The final decision that you return into
8 this court is going to be your decision.

9 The instruction number 4: Again, Mr. Carter
10 mentioned this. It's what I refer to as the Odell
11 instruction. The Judge tells you what to do, how you view
12 Odell Hallmon's testimony. It specifically says, "passing on
13 what weight, if any, you should give this testimony, you must
14 weigh it with great care and caution and look at it with
15 distrust and suspicion." Twice when he is being videotaped
16 after he said that he told the District Attorney's Office
17 that there was this confession that he knew no details to;
18 twice he admitted to you while being videotaped, no, he never
19 did that. He never did confess to me.

20 The next instruction deals with identification, and
21 it is a full page line that tells you, the Judge listed to
22 you the things that you can consider because ultimately, you
23 have to decide whether these witnesses who said, I saw Curtis
24 Flowers, actually saw Curtis Flowers, whether they saw him on
25 that day. You must consider the weeks or the months between
26 when they say when they supposedly saw it and when they
27 finally came forward and said anything. You consider the
28 different and changing descriptions from 5'3", 5'4", maybe
29 5'5" up to 5'10", and the descriptions of the clothing was so

Final Argument by Mr. de Gruy

important and the changing descriptions in the clothing.

You won't take this list that Mr. Evans wrote out for you back with you, but something to think about, and I was making notes as he was reading it off. At these different times, it's interesting to also remember how he was dressed according to these witnesses. Ms. Snow at one time said a white shirt and black jeans. She also told Doyle Simpson he was wearing shorts. Mr. McChristian didn't see the clothing. Ms. Gholston said blue or black shorts. Ms. Hallmon was positive, black nylon pants. Ms. Henry saw white shorts. Now Ms. Fleming, and you again can take her earlier statement back with you, black pants, purple jacket, dressy; brown pants, gray jacket. Clemmie Fleming paid attention to everything but the clothing.

And Mr. Collins didn't tell us what the clothing was, and I think unfortunately maybe for all of us, he wasn't here. But he sees him walking across the street at about the same time because it wasn't 9:30. We know it wasn't 9:30 because he was at Wal-Mart at 9:43. He sees a man calmly walking across the street and with another man, and he doesn't -- he identifies both Curtis Flowers, but previously, he had picked someone else out the first time he looked at a lineup. And his, from his testimony he was asked is there anything different about the picture of Curtis Flowers in that lineup than the other people, and he said yeah. It was close-up, real different from the other photos. He knew which picture to pick.

Now some of you when we were going through the jury selection process, we had discussions about the difference

Final Argument by Mr. de Gruy

1 will be the last instruction that the Court gave you. We
2 have had in this case, as we talked about the clothing, a lot
3 of inconsistent statements from the witnesses. They say one
4 thing one time, another thing another time. Some of them
5 like Ms. Fleming were a little reluctant to admit it. The
6 Court instructed you on how you deal with that evidence, how
7 you deal with the evidence that Doyle Simpson lied, that
8 Ms. Snow said she knew Curtis from a singing group, but
9 never, never said it was Curtis I saw until months later.
10 She had talked to him two or three times before she said oh,
11 it was Curtis Flowers.

12 Ms. Gholston and Ms. Hallmon said they had seen
13 Curtis wearing Filas, but only once. They never remembered
14 any other shoe he wore. These Nikes are in evidence. You
15 can look at them and see how worn they are. They never saw
16 him wear those. They only remember one day when he wore like
17 new Filas, couldn't remember any other shoe they ever saw him
18 wear.

19 Mr. Evans just told you Clemmie Fleming is one of
20 his most important witnesses, and we brought in several
21 people, and she herself had to admit she has given several
22 different statements. You consider what she told Latarsha
23 Blissett that she did not see Curtis. You consider what she
24 didn't tell her sister. You know, her sister said, It's a
25 good thing we weren't here this morning. She didn't say a
26 word, never mentioned to her that she had been down there.
27 Of course, we heard today the reason for that is because she
28 wasn't down there. The reason she told Latarsha she didn't
29 see Curtis Flowers is because she didn't see Curtis Flowers.

Final Argument by Mr. Evans

1 We are asking you to go back into the jury room,
2 begin your difficult work, talk to each other, hold firm to
3 the beliefs you have, and return a verdict of not guilty on
4 all counts. Thank you.

5 FINAL ARGUMENT BY MR. EVANS:

6 Thank goodness the Judge told y'all that you
7 couldn't rely on what we say on closing statement because my
8 memory is a lot different on a lot of things that happened at
9 trial than what theirs were. Y'all are the ones that base it
10 on your decision. The reason we have juries is that so
11 people can use their common sense and determine what happened
12 in cases. You are not asked to sit up here and do anything
13 other than that. You use your everyday good, common sense;
14 you look at the facts of the case, and you determine what
15 happened. And in this case that is not any close question.
16 You know what happened.

17 Now they want to argue on the lesser included that
18 if you believe that he just went to the store and killed them
19 because he was mad, that is regular murder. Where the
20 difference comes in, and it's the instruction the Court gave,
21 if you believe that it was during the commission of a
22 robbery, then it's capital murder; it's not regular murder.
23 And the Court has instructed you on what robbery is; that "If
24 you believe from all the evidence in this case beyond a
25 reasonable doubt that the Defendant Curtis Giovanni Flowers
26 did, on or about the 16th, July the 16th, 1996, in Montgomery
27 County, Mississippi, willfully, unlawfully, feloniously, and
28 with the felonious intent to permanently deprive the owner
29 thereof, take, steal and carry away or attempt to take, steal

Final Argument by Mr. Evans

1 and carry away the personal property of Bertha Tardy, doing
2 business as Tardy Furniture store, from the presence of and
3 against the will of Bertha Tardy by violence to her person
4 with a deadly weapon, the same would constitute robbery."

5 It's that simple. That's the Court's instruction,
6 and if he took the money by force or violence to her, that is
7 robbery. That is what makes it capital robbery, and shooting
8 her in the head, if that is not force to her, I don't know
9 what would be.

10 They want to try to say that they discredited
11 Clemmie by putting Roy Harris on. Y'all saw Roy Harris. It
12 was obvious he wasn't going to answer anything I asked. He
13 tried to act like he couldn't hear me, but he could hear the
14 opposing counsel all the way on the other side of the
15 courtroom. But one thing was very important; he admitted --
16 and I asked him about all four statements he had given. I
17 didn't ask about one or two. He admitted that he said after
18 they went around from Tardy Furniture Company, that Clemmie
19 said, "There goes Curtis Flowers." That is their own
20 witness.

21 Now they want to come up here and attack everybody
22 except the Defendant. You take their version of it, every
23 law enforcement officer in this case is a bunch of lying
24 morons. That's what they said. I tell you that these
25 officers did an excellent job. They followed the proper
26 procedure, and if it wasn't for them following the proper
27 procedure, we wouldn't know who killed all four people there.
28 But they did, and they did a good job of it.

29 They want to talk about prints. Prints aren't

Final Argument by Mr. Evans

1 important in this case, and one reason they are not, we have
2 got a public place; we know he was employed there. We know
3 his prints would have been in the store. They found a few
4 prints in different places. It was never said where the
5 prints came from. It wasn't said they came from behind the
6 counter. It was said they were prints recovered from the
7 store. They weren't from the door area, but even if we had
8 14 of his prints in there, that wouldn't mean anything
9 because he was an employee of the store. So that is no
10 evidence one way or the other.

11 Odell Hallmon. They want to attack Odell, and the
12 instructions given don't necessarily apply to one witness.
13 They apply to the law. In the case of Odell, you have got to
14 look at the circumstances. He told you that the Defendant
15 had asked him to lie, make up a story on his own sister. So
16 he started out a defense witness. He didn't start out on
17 something we did. He started out trying to make one of our
18 key witnesses out to look like a liar because this Defendant
19 asked him to, to try to save his own neck. And when did he
20 tell me? He didn't tell me while he was in jail wanting a
21 favor. He talked to his mother about it. He came and called
22 me after he got out of jail at a time he had no charges on
23 him and said Curtis Flowers asked me to lie.

24 **BY MR. CARTER:** Your Honor, I object to that.

25 There is no proof of that.

26 **BY MR. EVANS:** It's in the record.

27 **BY THE COURT:** Overruled.

28 **BY MR. EVANS:**

29 Curtis Flowers asked me to lie for him and make up

Final Argument by Mr. Evans

1 this statement, but it wasn't true, and he admitted to me
2 that he killed the people at Tardy Furniture at a time that
3 he didn't have anything he wanted from me. He wasn't in any
4 trouble.

5 Jack Matthews testified that they followed up on
6 proper procedure and were able to eliminate Doyle Simpson and
7 Emmett Simpson as suspects in this case. They didn't just
8 point in one direction. They checked everybody and
9 everything that they could check on, and everything pointed
10 back to Curtis.

11 Now they even want to argue that we can't prove
12 that she was withholding his check, and that is in his own
13 statement. Y'all have got his statement. It's in evidence.
14 Y'all will have it back there if you don't remember what is
15 in there. But it specifically says in there; it says: What
16 time did you go to your girlfriend's house? About 11, 12
17 something. And you indicated you went to the store. What
18 time did you go to the store? I imagine 12:30 or 12:45.

19 Now they say he wouldn't have done that if he had
20 known he was a suspect. I submit he would have done exactly
21 that. He wanted them to think that he was at home where they
22 couldn't try to prove that he was lying because if he had
23 said, I was at my sister's house at 9:15 while they had him
24 at the police station, you know what they would have been
25 doing? They would have sent somebody over there to the
26 sister's house to find out, and they would have known he
27 wasn't. That's why he said he was at home instead of trying
28 to say he was over at his sister's house because he didn't
29 have time to get somebody else to lie for him.

Final Argument by Mr. Evans

1 Y'all heard, even though it was long, y'all heard
2 Porky's testimony. They are trying to say he picked out
3 Doyle. He never anywhere in there said Doyle Simpson was in
4 front of Tardy Furniture. He said the person that I saw was
5 about this complexion. Something else. He said he is also
6 about the complexion of Chief Johnny Hargrove. And then when
7 he saw the other photo lineup, he said, That is him. That is
8 him.

9 Ladies and gentlemen, these officers have no reason
10 to lie to you. Randy Keenum has no reason to lie to you.
11 None of these people have any reason to lie to you. They are
12 telling you what happened.

13 They are showing you -- and this is not an exhibit.
14 Y'all won't be able to take that back. I used it just to
15 explain to you what the time line was. This helps show that
16 nothing in his statement is believable. This shows all of
17 the places where he was seen. It shows all of the people in
18 the community that were honest enough to say yeah, it was
19 him. Several of them have told you, I didn't want to be
20 involved. Clemmie Fleming, what did she tell you? How did
21 she get up here? Y'all remember what she said? She told a
22 friend that she saw Curtis Flowers running from the store,
23 and that friend called the officers and said, I want you to
24 go talk to her. She wasn't going to tell it because she was
25 scared, and she didn't want to get involved. But she told a
26 friend right after it happened, and that friend was the one
27 that got her testimony in.

28 Doyle didn't want to get his nephew in trouble.
29 You heard him say that. He also said, and I think this is

Final Argument by Mr. Evans

1 important, that he already knew that Doyle had been
2 identified at the time that he tried to put the gun as coming
3 from somewhere else. He really didn't want to put that gun
4 that committed the murders in his nephew's hand, but after
5 they pinned him down on it, not only did he do that, but he
6 was honest enough to carry them to where he had shot the gun,
7 and they were able to match it, 100 percent sure. He didn't
8 want to have to testify against his nephew, but he did.

9 Ladies and gentlemen, the facts are very clear in
10 this case. This Defendant is guilty of four counts of
11 capital murder. We have shown that to you from the
12 witnesses, from the evidence in the case, and we ask that you
13 go back in the jury room and return a verdict to the Court,
14 We, the jury, find the Defendant guilty of capital murder on
15 all four counts.

16 The Judge is going to send a form back there with
17 you. All you do is check the form, knock on the door and
18 return into court. But one thing I want to emphasize at this
19 point. The penalty has nothing to do with this point. As we
20 told you earlier, you are not even supposed to consider the
21 penalty at this phase. All you are looking at is guilt or
22 innocence. And I ask that you go back in the jury room and
23 return a verdict of guilty of capital murder because that's
24 what he is guilty of.

25 **BY THE COURT:** Ladies and gentlemen, it is now
26 time for you to retire to consider your verdict. When
27 you go back to the jury room, the bailiffs will
28 deliver all these exhibits to you that have been
29 admitted into evidence. As Mr. Evans stated and I

Verdict

1 stated earlier, there is a form attached to these
2 instructions for you to fill out when you have reached
3 that verdict on each count. When you have done so,
4 knock on the door, and the bailiff will bring you back
5 into court to deliver that verdict. And everybody can
6 go and deliberate this verdict except Ms. Blaylock,
7 you are the alternate in this case, and you may stay
8 seated for right now. Everybody else can go to the
9 jury room.

10 JURY RETIRES AT 2:55 PM.

11 (ALL EXHIBITS IN EVIDENCE AND THE INSTRUCTIONS WERE
12 SENT TO THE JURY ROOM. THE ALTERNATE WAS RELEASED BY THE
13 COURT. COURT REMAINED IN RECESS UNTIL THE JURY KNOCKED AT
14 5:25 PM. COURT WAS THEN BROUGHT TO ORDER WITH ALL COUNSEL
15 AND THE DEFENDANT PRESENT FOR THE FOLLOWING:)

16 **BY THE COURT:** Ladies and gentlemen, the bailiffs
17 have informed me that the jury has reached a verdict
18 in this case. Before I bring them in to render that
19 verdict, let me make this announcement. I will not
20 tolerate any disturbance by anybody in this courtroom.
21 If you disturb this courtroom, I will have the Sheriff
22 take you into custody, and I will deal with you at a
23 later date. Do you understand that, Mr. Sheriff?

24 **BY SHERIFF THORNBURG:** Yes, sir.

25 **BY THE COURT:** All right.

26 JURY RETURNS INTO OPEN COURT AT 5:26 PM.

27 **BY THE COURT:** Ladies and gentlemen, have you
28 reached a verdict on each count?

29 **BY JURORS:** We have.

Verdict - Jury Polled

1 **BY THE COURT:** Is it the verdict of all twelve of
2 you?

3 **BY JURORS:** Yes, sir.

4 **BY THE COURT:** Would you hand the verdict to the
5 bailiff, please.

6 (The verdict was handed to the Court and then to
7 the Clerk.)

8 **BY THE COURT:** The Defendant will rise. Read the
9 verdict, Ms. Halfacre, the verdicts.

10 **BY THE CLERK:** "We, the jury, find the Defendant
11 guilty of the Capital Murder of Bertha Tardy."

12 "We, the jury, find the Defendant guilty of the
13 Capital Murder of Robert Golden."

14 "We, the jury, find the Defendant guilty of the
15 Capital Murder of Carmen Rigby."

16 "We, the jury, find the Defendant guilty of the
17 Capital Murder of Derrick Stewart."

18 **BY THE COURT:** Do you want the jury polled?

19 **BY MR. DE GRUY:** Yes, Your Honor.

20 **BY THE COURT:** Ma'am, are these your verdicts?

21 **BY A JUROR:** They are.

22 **BY THE COURT:** How about you, ma'am?

23 **BY A JUROR:** Yes, sir.

24 **BY THE COURT:** You, ma'am?

25 **BY A JUROR:** They are.

26 **BY THE COURT:** You, sir?

27 **BY A JUROR:** Yes, sir.

28 **BY THE COURT:** You, ma'am?

29 **BY A JUROR:** Yes, sir.

Jury Polled

1 BY THE COURT: You, ma'am?

2 BY A JUROR: Yes.

3 BY THE COURT: You, ma'am?

4 BY A JUROR: Yes, sir.

5 BY THE COURT: You, ma'am?

6 BY A JUROR: Yes, sir.

7 BY THE COURT: You, sir?

8 BY A JUROR: Yes, sir.

9 BY THE COURT: You, ma'am?

10 BY A JUROR: Yes, sir.

11 BY THE COURT: You, ma'am?

12 BY A JUROR: Yes, sir.

13 BY THE COURT: You, ma'am?

14 BY A JUROR: Yes, sir.

15 BY THE COURT: I find that the verdict is
16 unanimous. Ladies and gentlemen, I'm going to ask you
17 at this time to return to the jury room for just a
18 minute and let me discuss with the attorneys about the
19 second phase of the trial.

20 JURY LEAVES THE COURTROOM.

21 BY THE COURT: Y'all may be seated. Let me see
22 the lawyers up here.

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
24 AUDIENCE AS FOLLOWS:)

25 BY THE COURT: I don't think y'all are going to
26 object to what I'm going to say at this point in time.
27 It is 5:30 in the afternoon. I don't think we ought
28 to begin the sentencing phase until tomorrow at 9
29 o'clock. Everybody in agreement with that?

Court recessed for the day

1 **BY MR. EVANS:** Yes, sir.

2 **BY THE COURT:** Now I'm going to expect everybody
3 to have their witnesses here at 9 o'clock. Okay?

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** Okay. All right.

6 END BENCH CONFERENCE

7 **BY THE COURT:** Ladies and gentlemen, it is 5:30
8 in the afternoon. There will be additional evidence
9 that will be presented in this matter at the
10 sentencing phase. It's too late in the day for us to
11 do that. We are therefore going to continue that
12 phase of the trial until in the morning -- wait just a
13 minute now. I haven't let everybody go. Until 9
14 o'clock in the morning, we will begin the sentencing
15 phase promptly at 9 o'clock. Now you are free to go.
16 TRIAL WAS RECESSED FOR THE DAY ON FEBRUARY 11, 2004 AT
17 5:30 PM.

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2/12/04 Motion - JURY OUT

(ON FEBRUARY 12, 2004, COURT WAS OPENED, AND WITH ALL COUNSEL AND THE DEFENDANT PRESENT BUT WITH THE JURY OUT, THERE WAS THE FOLLOWING:)

BY THE COURT: Are y'all ready to proceed?

BY MR. EVANS: Yes, Your Honor. The one thing we need to take care of before we proceed is whether or not anyone is going to ask for the rule to be invoked on this phase of the trial or whether all the witnesses that are testifying for both sides can be present in the courtroom.

BY MR. DE GRUY: We are not requesting the rule be invoked. We think it would be proper for them--

BY THE COURT: -- So everybody agrees they can all stay in here?

BY MR. EVANS: Yes, sir.

BY MR. DE GRUY: Yes, sir. Your Honor, we have a motion to make. I think this -- I guess we can do it. The jury is not in here. Before the State begins calling witnesses, we anticipate that they will call a number of witnesses. We are not sure how many that will be testifying to what the law characterizes as victim character or victim impact evidence. And we object to the introduction of this evidence on several grounds. Under Payne v. Tennessee, the United States Supreme Court said it was admissible if relevant, and that is the due process limitation under our state and federal constitutions. And under our statute, this evidence would not be relevant to anything that the jury could consider. They can only consider in the

2/12/04 Motion - JURY OUT

1 weighing process of making this decision the
2 aggravating circumstances. And none of this evidence
3 would go to the aggravating circumstances. Therefore,
4 it's not relevant to anything the jury is to consider
5 and make a finding on. And of course, it is the
6 potential for a decision based on passion and raw
7 emotion and not the law that this Court hands down.
8 We would like a ruling on that motion first.

9 **BY THE COURT:** Is that a motion in limine?

10 **BY MR. DE GRUY:** Yes, it is.

11 **BY THE COURT:** Okay. That motion is overruled.

12 **BY MR. DE GRUY:** And again--

13 **BY THE COURT:** -- The law in this state is that
14 that evidence is admissible.

15 **BY MR. DE GRUY:** And the second motion is that
16 if -- the only way I can imagine it would be remotely
17 relevant would be under the Victim Rights Act, and
18 under that act it clearly, it speaks of victim in the
19 singular. And therefore, putting on more than four
20 witnesses, more than one representative for each of
21 the four victims, would be beyond the scope of that
22 legislation. So we would ask that, without waiving
23 our objection to any of the testimony, we would ask
24 that it be limited to one person from each family.

25 **BY THE COURT:** Okay, I don't think the law
26 requires that I do that, and I'm not going to do that.
27 However, I will say that under 403 at this phase, as
28 well as the first phase, I can limit cumulative
29 evidence. So I direct both sides not to just to

Motion - JURY PRESENT

1 accumulate evidence for the purpose of accumulating
2 it. Make your point and move on I guess is what I'm
3 saying. Okay. So that motion is overruled. Are we
4 ready now?

5 BY MR. EVANS: The State is ready, Your Honor.

6 BY MR. DE GRUY: Yes, Your Honor.

7 BY THE COURT: Okay.

8 JURY ENTERS THE COURTROOM.

9 BY THE COURT: Does the State have a motion in
10 relation to--

11 BY MR. EVANS: Yes, Your Honor. At this point in
12 the trial, the State would move to be allowed to
13 reintroduce all of the exhibits and testimony from the
14 previous phase so that the jury may consider
15 everything that was done in the first phase in this
16 phase of the trial.

17 BY MR. DE GRUY: No objection, Your Honor.

18 BY THE COURT: That motion is sustained. All
19 right, who you will you have first?

20 BY MR. EVANS: Roxanne Ballard.

21 BY THE WITNESS: Do I need to be sworn again?

22 BY MR. EVANS: You have already been sworn.

23 BY THE COURT: You don't have to be sworn again.

24 BY MR. DE GRUY: Your Honor, are we not going to
25 give opening statements at this phase?

26 BY THE COURT: If y'all want an opening
27 statement, I will give you one. I have never had
28 anybody request one. That's the reason I didn't go
29 there.

Roxanne Ballard - DIRECT

1 BY MR. DE GRUY: Ms. Ballard is up there. That
2 is fine. We will cover it in closing.

3 BY THE COURT: Okay.

4 BY MR. EVANS: May I proceed, Your Honor?

5 BY THE COURT: Yes.

6 BY MR. EVANS: Give me just a second.

7 ROXANNE BALLARD,

8 a white female called again to testify as a witness by the
9 State of Mississippi, this time on the SENTENCING PHASE,
10 having been previously sworn, testified as follows, to-wit:

11 DIRECT EXAMINATION BY MR. EVANS:

12 Q. Ms. Ballard, you are the same Roxanne Ballard that
13 testified in the first phase; is that correct?

14 A. Yes, I am.

15 Q. Ms. Bertha Tardy was your mother?

16 A. Yes.

17 Q. If you would, tell the jury just a little bit about
18 your mother.

19 A. My mother was a very beautiful woman who was a very
20 strong Christian woman. She was very involved in this
21 community. She was a leader in her church. She was a leader
22 in this community including the Economic Council, the Habitat
23 for Humanity, the Leadership Committee, more things than I
24 can even recall. She was very, very involved. She liked to
25 help people, and she did everything she could to help this
26 community and to help the people in it.

27 Q. How did her death affect you and your family?

28 A. Well, there is no way in a couple of minutes I can
29 tell you what the last seven and a half years have been like.

Roxanne Ballard - DIRECT

1 But I was eight weeks away from my due date with my second
2 child the day my mother was murdered. And it caused a lot of
3 stress that I can't even describe. I had a four and a half
4 year old son who was very attached to his grandmother, and we
5 had to tell him. We had to explain to him what had happened
6 because it was all over the news and the radio and
7 everything. It's a very hard thing to look in the eyes of a
8 little bitty kid and tell them something like this can happen
9 to people. They have had to watch us go through this for all
10 this time. And even last night asking questions of why, why
11 this is happening to us. Why is this happening to our
12 family? Why does my mama have to go to trial? Why did a bad
13 person do this to four people?

14 I also lost Carmen, who I had known for 20 years
15 who I was very attached to. My child Jeremy was very
16 attached to her. He spent a lot of time in and out of the
17 store. She baby-sat him, took care of him. It has just been
18 a nightmare.

19 Q. How long did Carmen work at the store?

20 A. For 20 years.

21 Q. Do you know how long Robert Golden had been working
22 there?

23 A. It was his first day.

24 Q. And do you know how long Derrick Stewart had been
25 there?

26 A. It was his second day.

27 Q. Ms. Ballard, I'm not going to be long. I just want
28 to ask you one more question. Do you have an opinion -- you
29 know the jury has got to determine what penalty is

Ballard - DIRECT - Charles Tardy - DIRECT

1 appropriate in this case. Do you have an opinion of what
2 sentence would be appropriate in this case?

3 A. Yes, sir. I do.

4 Q. Which penalty is that?

5 A. Death penalty.

6 BY MR. EVANS: Your Honor, I will tender this
7 witness.

8 BY MR. DE GRUY: I have no questions.

9 BY THE COURT: Thank you, Ms. Ballard. Who do
10 you have next?

11 BY MR. EVANS: Chuck Tardy.

12 CHARLES TARDY,

13 a white male called to testify as a witness by the State of
14 Mississippi on the SENTENCING PHASE, testified as follows,
15 to-wit:

16 BY THE COURT: State your name, please, sir.

17 BY THE WITNESS: Charles Holeman Tardy.

18 DIRECT EXAMINATION BY MR. EVANS:

19 Q. Mr. Tardy, how were you related to Bertha Tardy?

20 A. Bertha was my stepmother. She and my father had
21 been married for a little more than a year, but I have known
22 Bertha all my life. She was a baby sitter for me when I was
23 five or six years old. She had been employed by my father in
24 the furniture business for thirty something years, so it was
25 someone I have known forever.

26 Q. What type of person was Bertha?

27 A. Bertha was a very loving, considerate woman. She
28 was just a great person.

29 Q. What type of impact did her death have on you?

Charles Tardy - DIRECT

1 A. Well, it was devastating for our entire family. We
2 were all saddened by the loss, and it caused grave hardship
3 for my father, and it affected my children. I had a 13 year
4 old daughter at the time who was very attached to her because
5 she had known her too all of her life, who subsequently had
6 great fears about being at home alone and had to seek
7 psychiatric counseling. So we were all affected by this.

8 **BY MR. EVANS:** Your Honor, I have no further
9 questions of this witness.

10 **BY THE COURT:** Wait just a minute, sir. Mr.
11 Tardy. Do you have any questions?

12 **BY MR. DE GRUY:** No, I have no questions.

13 **BY THE COURT:** Thank you. You may step down.
14 Who do you have next?

15 **BY MR. EVANS:** Benny Rigby.

16 (Mr. Tardy leaves the witness stand.)

17 **BY THE COURT:** Let me -- did we swear Mr. Tardy?

18 **BY THE COURT REPORTER:** No, sir.

19 **BY THE COURT:** I don't believe we did.
20 Mr. Tardy, if you will come back up here just a
21 second. Hold on, Mr. Rigby.

22 (Mr. Tardy stands before the Court.)

23 **BY THE COURT:** Would you raise your right hand,
24 sir. Do you solemnly swear that the testimony that
25 you just gave was the truth, the whole truth, and
26 nothing but the truth so help you God?

27 **BY THE WITNESS:** I do.

28 **BY THE COURT:** All right. Does anybody have any
29 questions concerning the fact that he didn't get sworn

Benny Rigby - DIRECT

1 prior to--

2 BY MR. DE GRUY: -- No, sir.

3 BY MR. EVANS: No, sir.

4 BY THE COURT: All right, Mr. Tardy. Mr. Rigby.

5 BENNY RIGBY,

6 a white male called to testify as a witness by the State of
7 Mississippi in the SENTENCING PHASE, having first been duly
8 sworn, testified as follows, to-wit:

9 BY THE COURT: Have a seat.

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. State your name, please.

12 A. Benny Rigby.

13 Q. Benny, how were you related to Carmen Rigby?

14 A. Carmen was my wife for 25 and a half years.

15 Q. Can you tell us just a little bit about Carmen?

16 A. Well, everybody that knew Carmen knew that she
17 loved life and she enjoyed life, and you hardly ever met her
18 that she wasn't smiling. She was a very loving wife and a
19 wonderful mother.

20 Q. How did her death that day impact on you and your
21 family?

22 A. Well, as Roxanne said, it's hard to describe
23 something like this to anybody else if you haven't gone
24 through it. At that time my eldest son Benji had just
25 finished college, and my youngest son Bryan had just finished
26 high school, and had just gotten a scholarship to play
27 baseball at Holmes Jr. College, and she was all excited about
28 that. But anyway, she never got to see him play, and she
29 loved her children, and she was always wanting to be there

Benny Rigby - DIRECT - Bryan Rigby - DIRECT

1 for them as I was. And a lot of things that she was cheated
2 out of like when Benji got married, she wasn't able to be
3 there. We have got a grand baby that she will never get to
4 see, and she loved children. No matter what child she was
5 around, she had to pick it up, and she just, she loved
6 children. And it's hard to know that, you know, your
7 grandchild will never get to see their grand mom.

8 Q. Benny, is there anything else that you would like
9 to add?

10 A. No, sir. Other than I thought about this a lot,
11 and I really believe that a person that does something like
12 this deserves the death penalty. They deserve to be put to
13 death.

14 BY MR. EVANS: Your Honor, I will tender this
15 witness.

16 BY THE COURT: Any questions?

17 BY MR. DE GRUY: No questions, Your Honor.

18 BY THE COURT: You may step down, Mr. Rigby.

19 WITNESS EXCUSED.

20 BY MR. EVANS: Bryan Rigby next, Your Honor.

21 BRYAN RIGBY,

22 a white male called to testify as a witness by the State of
23 Mississippi in the SENTENCING PHASE, having first been duly
24 sworn, testified as follows, to-wit:

25 DIRECT EXAMINATION BY MR. EVANS:

26 Q. State your name, please.

27 A. Bryan Rigby.

28 Q. Bryan, Carmen was your mother; is that right?

29 A. Yes, sir.

Bryan Rigby - DIRECT

1 Q. How old were you when she was killed?

2 A. I was 18.

3 Q. Can you tell us just a little bit about your
4 relationship with your mother?

5 A. Well, being the youngest child, we were very close.
6 And by being the youngest, I got a little special treatment
7 because I was her baby. But she, it was mine and my brother
8 and my dad's beck and call and did everything that she could
9 ever do for us to be sure that we had the best. And
10 basically, just I mean there was no doubt in our mind that
11 she loved us and knew that -- we knew that and just a great
12 person to be around, I mean just unbelievable person. As my
13 dad said, she loved children and loved us. And as my dad was
14 saying, I was 18 and just graduated high school and going to
15 college and about to go to college. I had just signed a
16 baseball scholarship and everything, and I thought my little
17 world was perfect. But without her, there is nothing.

18 Q. Bryan, is there anything else you would like to
19 add?

20 A. Just that, I mean could I tell you how this has
21 affected mine and my family's life, and I mean just the
22 little things, the things that are supposed to be exciting.
23 Going to college and when you are leaving and going to
24 college, it is supposed to be exciting, and when you leave
25 and go to college, you feel like you are abandoning your
26 family, and it shouldn't be that way.

27 BoBo and I were very close. And I'm the one that
28 got him the job. And I think about that every day. And just
29 like they say, that this man destroyed four families' lives.

Bryan Rigby - DIRECT - Jimmy Latham - DIRECT

1 And there is nothing anybody can say and nothing anybody can
2 do to replace that. His family still gets to see him. He
3 gets to breathe. He has a thought process, and he took that
4 away from four people.

5 BY MR. EVANS: Your Honor, we tender this
6 witness.

7 BY MR. DE GRUY: We have no questions, Your
8 Honor.

9 BY THE COURT: You may step down, Mr. Rigby.

10 WITNESS EXCUSED.

11 BY MR. EVANS: Reverend Jimmy Latham.

12 BY MR. DE GRUY: Your Honor, could the bailiff
13 pass the -- I think some of the jurors may need
14 tissue.

15 BY THE COURT: Sure.

16 JIMMY LATHAM,

17 a white male called to testify as a witness by the State of
18 Mississippi in the SENTENCING PHASE, having first been duly
19 sworn, testified as follows, to-wit:

20 BY THE COURT: State your name, please, sir.

21 BY THE WITNESS: Jimmy Latham.

22 DIRECT EXAMINATION BY MR. EVANS:

23 Q. Reverend Latham, I want to ask you if you knew
24 Carmen Rigby during her life? Did you know Carmen Rigby?

25 A. I did.

26 Q. Can you tell the ladies and gentlemen of the jury a
27 little bit about what Carmen was like?

28 A. I was called to be Carmen's pastor in 1988 in
29 October. And of course, I had known her prior to that, but

Jimmy Latham - DIRECT

1 in the church family, you get to know them real well. Carmen
2 was a lady of the first order. I mean in regards to her love
3 for her family, her church and her pastor, she was top. She
4 served the church very faithfully. She was our nursery
5 mother, and I don't care how many children that came into the
6 church, she would care for them. She didn't wait -- excuse
7 me. She didn't have to wait for somebody to tell her to go
8 to see about the children. She would get them and carry them
9 to the nursery and tend to them. And like the previous
10 testimony, she loves children. And it was, in all the times
11 that we were there -- of course, she was treasurer at the
12 time of her death and very efficient. But her love for
13 people was radiated through her daily, constantly, to not
14 just the church family, but to people in the community. She
15 had a compassion for them, and I just -- for a lady, she
16 would, it would be one that you could very, you could say
17 well, thank God for giving me a lady, a woman, a spouse, a
18 wife, a mother like Carmen Rigby.

19 Q. What type of impact did her death have on this
20 community?

21 A. Oh, it devastated our church. It was, it seemed
22 like it made an indelible mark on the church body, and it
23 never was the same after that. It never was the same after
24 her death.

25 Q. Reverend Latham, is there anything else you would
26 like to add?

27 A. I would like to say one thing. As much as she
28 loved children, I regret and I'm sorry that she never got to
29 hold and love her little granddaughter.

Jimmy Latham - CROSS - Willie Golden - DIRECT

BY MR. EVANS: Tender the witness, Your Honor.

CROSS-EXAMINATION BY MR. DE GRUY:

Q. Reverend Latham, I know, I imagine you have counseled the family a great deal over the years and been a comfort to them. Would you agree to that?

A. I have tried.

Q. And I know you are trying to help them move on because that is what those of you who are left behind have to do, all of us. Correct?

A. (No audible response.)

Q. And I would just ask you if you agree with me, that it is time that we begin some healing?

A. Is it -- I can't--

Q. -- Is it time that we begin some healing?

A. Oh, definitely.

BY MR. DE GRUY: That's all I have, Your Honor.

BY THE COURT: Anything else, Mr. Evans?

BY MR. EVANS: No, sir.

BY THE COURT: Reverend, you may step down.

WITNESS EXCUSED.

BY THE COURT: Who do you have next?

BY MR. EVANS: Willie Golden.

WILLIE GOLDEN,

a black male called to testify as a witness by the State of Mississippi in the SENTENCING PHASE, having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION BY MR. EVANS:

Q. State your name, please.

A. Willie Golden.

Willie Golden - DIRECT

1 Q. Mr. Golden, how were you related to Robert?

2 A. Robert Golden was my brother.

3 Q. Can you tell the ladies and gentlemen of the jury a
4 little bit about Robert?

5 A. Well, Robert was the third one in the family, and
6 he graduated from high school at Winona High School and went
7 on to college. And he accepted a job and later got married,
8 and he had two children in life. He worked hard to try to
9 support those two children because they were very sickly.
10 And he just struggled in life, and he was just a kind person
11 and did a lot of -- he was just faithful to his family.

12 Q. You say he had how many children?

13 A. He had two. Two sons.

14 Q. How old were they at the time he was killed?

15 A. One was about 17, and the other one probably was
16 about eight.

17 Q. Mr. Golden, were you close to your brother?

18 A. Well, he and I was close because we grew up
19 together. The rest of my family members grew up and they
20 left and went to different places, but he and I was always
21 close. We lived all our lives here in Winona together. So
22 we always saw each other at least once or twice a week, so we
23 was close.

24 Q. How has his death, being murdered affected you and
25 your family and his family?

26 A. Well, it affected me a great deal because like I
27 say, we was close. And at the time, along about the time
28 that happened, a little after that happened, I had went
29 through a divorce before then, and he always came by and

Willie Golden - DIRECT

1 checked on me. You know, when he get off work at night, he
2 would come by, sometime wouldn't even come in. He would just
3 come by the window and asked me was I all right. And that
4 just meant so much to me at that particular time, and he just
5 meant a great deal to me because like I say, we was close.
6 He and I was close, and we just always seen each other. And
7 the last day before this happened, he came by, and we sit and
8 talked, and not knowing that was the last time that we would
9 talk. So he meant a great deal to me as a brother. He was
10 just a brother and a friend, just you know, just all those
11 things to me because we was close.

12 Q. Do you know how his death affected his children?

13 A. Well, his death affected the children, especially
14 his young son because he had a lot of problems. You know, he
15 is kind of handicapped like, and I know it had a lot of
16 effect on him, you know, and his wife because she is just
17 kind of in a mentally stage back and forth to the doctor. So
18 it had a great deal, you know, it just really put a burden on
19 his family.

20 Q. Mr. Golden, is there anything else you would like
21 to add?

22 A. Well, the main thing, I hate to pass judgment on
23 anybody, but I just want the right thing to be done and just
24 to be over.

25 BY MR. EVANS: Tender the witness, Your Honor.

26 BY THE COURT: Wait just a second, Mr. Golden.

27 CROSS-EXAMINATION BY MR. DE GRUY:

28 Q. Mr. Golden, I'm sorry; I just have one question.
29 Whatever the jury decides, you are comfortable with; that's

Willie Golden - CROSS - Dale Stewart - DIRECT
the right thing?

A. If this jury decides.

Q. I just wanted to understand what you were saying?

A. Yes.

BY MR. DE GRUY: Thank you.

BY THE COURT: Anything else, Mr. Evans?

BY MR. EVANS: No, sir.

BY THE COURT: Mr. Golden, you may step down.

WITNESS EXCUSED.

BY THE COURT: Who will you have next?

BY MR. EVANS: Dale Stewart.

DALE STEWART,

a white male called to testify as a witness by the State of Mississippi in the SENTENCING PHASE, having first been duly sworn, testified, as follows, to-wit:

BY THE COURT: State your name, please, sir.

BY THE WITNESS: Dale Stewart.

DIRECT EXAMINATION BY MR. EVANS:

Q. Dale, how were you related to BoBo?

A. He was my younger brother. He was six years younger than me.

Q. How old was BoBo when he was killed?

A. Sixteen. About three weeks after his sixteenth birthday just happened.

Q. And how old were you at that time?

A. Twenty-two.

Q. Can you tell us just a little bit about what your younger brother was like?

A. Yes, sir. He was very outgoing, well liked by most

Dale Stewart - DIRECT

1 everybody. According to when this happened, the funeral was
2 held at First Baptist Church that day, and the church was
3 full, and he was 16 years old. So I believe he was well
4 liked and respected by many.

5 Q. How close were you and your brother?

6 A. Very close.

7 Q. What, can you describe what kind of impact his
8 being murdered had on you and your family?

9 A. Well, he was deprived of a lot. He never got,
10 never had a prom, didn't graduate high school. We were taken
11 away; Christmases were taken away, birthdays. He was, he was
12 a very good athlete. The night before, the night before he
13 was shot, he pitched a seven to nothing shut out in an all
14 star baseball game. As far as the impact on the community,
15 going by the grave site, and one year after this happened,
16 they named a baseball field after him. (NOTE: Witness is
17 crying.) I'm sorry.

18 Q. It's okay.

19 A. But my mother and father, to see them hurt -- I
20 don't know what it's like to lose a child or a mother or a
21 father. But I guarantee it hurts as bad to lose a sibling
22 and a best friend.

23 Q. Dale, is there anything else you would like to add?

24 A. I would. BoBo lived for a week in the intensive
25 care unit in Jackson, Mississippi. He was brain dead. He
26 never responded. He was hooked up to machines and
27 everything, and in our situation we did, other than the other
28 three families, we did have an opportunity to say goodbye,
29 whether he was responsive or not. We had time to spend with

Dale Stewart - DIRECT - Kathy Perminter - DIRECT

him. And I just want people that do remember BoBo to remember what he was like before any of this happened.

BY MR. EVANS: Your Honor, I tender this witness.

BY MR. DE GRUY: We have no questions.

BY THE COURT: You may step down.

WITNESS EXCUSED

BY MR. EVANS: Kathy Perminter will be the next witness, Your Honor.

KATHY PERMINTER,

a white female called to testify as a witness by the State of Mississippi in the SENTENCING PHASE, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Kathy Perminter.

DIRECT EXAMINATION BY MR. EVANS:

Q. Kathy, how were you related to BoBo?

A. I was BoBo's mother.

Q. Can you tell us just a little bit about BoBo and your family?

A. Yes, sir. I could tell you a lot, but to make it short, BoBo was the youngest of my two children. He was my baby. There is six years difference between Dale and BoBo. And from the time he -- I don't know; Dale, he was six years old at the time, so I was just more strong to BoBo at that time. But as he grew older and all, BoBo had a dream. He had a big dream of life. He was in the second grade. He told me one night; he said, "Mama," he said, "I would love to just go get a GED and go to work somewhere. I just want to make money and just not go to school and just make money; go

Kathy Perminter - DIRECT

1 get a job and make money." Well, the night before all this
2 happened, he called me excited about his job at Tardy
3 Furniture Company. He said, "Mama, I'm really going to like
4 this job." He said, "It's cool inside." He said, "All I
5 done was sweep the floors and, you know, just do what they
6 told me, dust." And before that, he had been out in the hot
7 sun painting fences, and he didn't like it. And I think
8 Carmen was the one that got him the job. BoBo loved
9 baseball. And that was the dream that he wanted to fulfill.
10 He had told me prior, when he first started playing baseball,
11 he said, "Mama, I want to play for the pros one day," and he
12 was so good. Everyone that new Bo, they loved him. They
13 loved him when they first met him. He always had a smile,
14 never had an enemy that I know of; never crossed paths with
15 anyone.

16 The impact as far as my family, it's hard. It's
17 hard to go to Christmas. It's a part of you missing. It's a
18 part of my family missing. When this all happened, it was
19 like one side of me is gone, and it will never come back.
20 And I'm ready for some peace. I have a peace knowing that Bo
21 is in heaven, but he is an angel in heaven. (NOTE: Witness
22 is crying.) But I want to be able to put all this to a
23 closure and not have to go through this any more.

24 Bo didn't graduate from school. He didn't have
25 that opportunity to walk down the aisle and get his diploma.
26 My mom, she has a wall in her house at that time of all of
27 her grandchildren when they graduated, their senior
28 portraits. Bo's was the next one up. He was in a beauty
29 pageant. After all this happened, I had a photographer to

Kathy Permitter - DIRECT - Raleigh Wood - DIRECT

1 take just from his shoulders up to get a senior portrait so I
2 could fill that place because I couldn't stand it being
3 vacant. But I'm just ready for the peace.

4 BY MR. EVANS: Your Honor, I will tender this
5 witness.

6 BY MR. DE GRUY: No questions.

7 BY THE COURT: You may step down.

8 WITNESS EXCUSED.

9 BY MR. EVANS: Raleigh Woods, Your Honor.

10 RALEIGH WOOD,

11 a white male called to testify as a witness by the State of
12 Mississippi on the SENTENCING PHASE, having first been duly
13 sworn, testified as follows, to-wit:

14 BY THE COURT: State your name. Go ahead.

15 DIRECT EXAMINATION BY MR. EVANS:

16 Q. Would you state your name?

17 A. Raleigh Wood.

18 Q. Mr. Woods, how did you know BoBo Stewart?

19 A. At that time I was head baseball coach at Winona
20 High School, and BoBo was one of my players. And he was, he
21 was a super guy. He was always, always happy, always had a
22 smile on his face. Everybody loved BoBo. He was my leading
23 hitter as a sophomore. I think he batted like .427, and he
24 was, he was a super athlete. And BoBo would have gone on,
25 and he would have played college baseball. He had that type
26 of ability where he would have gone on and played, and that
27 ability was-- he never had that chance. It was taken from
28 him. But he was a super, super young man. I watched him
29 play the night before. He would, he came up to me right

Raleigh Wood - DIRECT

1 after the ball game, and he said, "Coach, did you see me?" I
2 said, "You looked great out there." He just pitched a great
3 ball game. He was going to be doing a lot of pitching for me
4 the next year. He said, "Are you coming back tomorrow
5 night?" I said, "I'm going to be back again tomorrow night
6 to watch you again." And he was just that kind of a
7 person -- yes, sir; no, sir. He would come out of his way to
8 see you and talk to you and just check on you, see how you
9 are doing. He would play with my little girl. He loved
10 kids. But he was a great person.

11 Q. What type of impact did his death have on this
12 community?

13 A. It affected the entire high school. You know, the
14 kids, all the kids over there, the entire baseball team. You
15 know, it just affected all of them. BoBo was the kind that
16 would, you know, get to practice, and he would cheer
17 everybody up. And he always had that smile on his face. You
18 know, if somebody was having a bad day, he would try to, he
19 would cheer them up, get them going. And he wasn't there
20 after that, you know, and it just wasn't the same because
21 nobody was really there to take that role, you know, that
22 BoBo had done. He was the one that picked people up, and
23 everybody, you know, looked to, for him in that role, and
24 that's what he did. He was a super young man.

25 BY MR. EVANS: Your Honor, I will tender this
26 witness.

27 BY MR. DE GRUY: No questions.

28 BY THE COURT: You may step down.

29 WITNESS EXCUSED.

Archie Flowers - DIRECT

1 **BY MR. EVANS:** Your Honor, the State of
2 Mississippi rests.

3 STATE OF MISSISSIPPI RESTS ON SENTENCING PHASE.

4 **BY THE COURT:** Who will you have first?

5 **BY MR. DE GRUY:** Your Honor, we call Archie
6 Flowers.

7 **ARCHIE FLOWERS,**
8 a black male called to testify as a witness by the Defendant
9 in the SENTENCING PHASE, having first been duly sworn,
10 testified as follows, to-wit:

11 **BY MR. DE GRUY:** May I proceed?

12 **BY THE COURT:** Yes, sir.

13 DIRECT EXAMINATION BY MR. DE GRUY:

14 Q. Would you please state your name.

15 A. Archie Lee Flowers.

16 Q. Mr. Flowers, where do you live?

17 A. In Winona.

18 Q. And how long have you lived there?

19 A. Probably about forty something years.

20 Q. Are you working now?

21 A. Right. Working at Wal-Mart.

22 Q. How long have you worked at Wal-Mart?

23 A. Three years.

24 Q. And what is your relationship to Curtis Flowers?

25 A. We real close.

26 Q. And you are his father?

27 A. Right.

28 Q. You said you are real close. Were there things as
29 Curtis was growing up that y'all did together?

Archie Flowers - DIRECT

1 A. We sung together. You know, I got a group, and he
2 sang in my group.

3 Q. And what kind of group is that?

4 A. Gospel group.

5 Q. How long have you been involved with the gospel
6 group?

7 A. I think about thirty something years.

8 Q. What type of places do y'all sing?

9 A. All around the country, up north.

10 Q. Do you do public concerts or--

11 A. No -- sometimes and benefit programs.

12 Q. Benefit programs?

13 A. Right.

14 Q. Is this a paying job for you? Are you a
15 professional musician?

16 A. No.

17 Q. And you said that Curtis sang with you?

18 A. Right.

19 Q. How long was he part of your group? What age was
20 he when he joined your group?

21 A. I guess he was about 12 or 13, something like that.

22 Q. So I assume it wasn't a paying job for him?

23 A. No, it wasn't paid.

24 Q. Was there a lot of work involved in being part of a
25 gospel group, a traveling gospel group?

26 A. It is when, you know, you are traveling. You have
27 got to see to getting your uniforms, stuff like that.

28 Q. What kind of singer is Curtis?

29 A. He is a real good singer.

Archie Flowers - DIRECT

1 Q. Do you have other children?

2 A. Sho' do.

3 Q. Could you tell us who they are?

4 A. One of them -- my oldest son Archie, and my oldest
5 girl Felicia, and my next girl is Priscilla, and the next
6 girl is Shareta.

7 Q. It's six children?

8 A. Six.

9 Q. I won't ask you their ages.

10 A. I probably couldn't remember.

11 Q. Were your children close as they were growing up?

12 A. Yes, sir.

13 Q. What kind of relationship did Curtis have with
14 them?

15 A. They always was cracking jokes, playing. But
16 Curtis, he, every time we go rehearse, he always crack a joke
17 before we start rehearsing. So I tell him, I said, "Now we
18 are fixing to get serious."

19 Q. Would he get serious?

20 A. He would get serious then.

21 Q. Do you give your kids chores to do around the
22 house?

23 A. Yes, sir.

24 Q. And how was Curtis?

25 A. He did it; he did it all. You didn't have to
26 actually tell him. He know what he had to do. He would do
27 it.

28 Q. Did he, what kind of relationship did he have to
29 the neighbors?

Archie Flowers - DIRECT

1 A. Oh, he was good to neighbors. Any of the neighbors
2 around there could tell you. He always trying to help
3 somebody.

4 Q. What type of things would he do?

5 A. He would go across the street. He would rake
6 leaves for a lady, and he shaved an old man across the
7 street, you know. He was just always involved in stuff like
8 that.

9 Q. Do you have a close family, Mr. Flowers?

10 A. Real close.

11 Q. And what about your wife, Mr. Flowers? Is that
12 Curtis' mother?

13 A. Right.

14 Q. How long have you been married?

15 A. Forty years.

16 Q. Is she in the courtroom today?

17 A. Yes, sir.

18 Q. Are you here today to speak for her?

19 A. Yes.

20 Q. I know yesterday was enough to-- a difficult night
21 for her last night. Did she ask you to be her spokesperson
22 today?

23 A. Right.

24 BY MR. DE GRUY: That's all I have, Your Honor.

25 BY MR. EVANS: No questions.

26 BY THE COURT: You may step down, sir.

27 WITNESS EXCUSED.

28 BY MR. DE GRUY: Call Nelson Forrest.

29 BY THE COURT: Nelson Forrest. Wait a minute.

Nelson Forrest - DIRECT

1 Holly, what are you doing?

2 BY THE BAILIFF: I was going to turn the air
3 conditioner fan on.

4 BY THE COURT: Okay, well, let's just stay down
5 here for right now.

6 (NOTE: Thermostat was in the back of the jury
7 box.)

8 NELSON FORREST,
9 a black male called to testify as a witness by the Defendant
10 in the SENTENCING PHASE, having first been duly sworn,
11 testified as follows, to-wit:

12 BY THE COURT: Have a seat up here.

13 DIRECT EXAMINATION BY MR. DE GRUY:

14 Q. Mr. Forrest, could you please tell us your name.

15 A. Nelson Forrest.

16 Q. Mr. Forrest, where do you live?

17 A. 116 Hazel Circle, here in Winona.

18 Q. How long have you lived in Winona?

19 A. All my life.

20 Q. Are you currently employed?

21 A. Yes.

22 Q. And could you tell us what you are doing?

23 A. I am employed with the Mississippi Military
24 Department, Camp McCain. I am also Supervisor District Five
25 here in Montgomery County. I'm a pastor of the United
26 Methodist Church in Wespin in Oktibbeha County. And I'm a
27 member of the Mississippi National Guard here in Winona, the
28 1st and 114th field artillery.

29 Q. And you know Curtis Flowers?

Nelson Forrest - DIRECT

1 A. Yes.

2 Q. And are you related to Curtis Flowers?

3 A. Yes.

4 Q. How are you related to him?

5 A. His father and my father are first cousins.

6 Q. Were you close to Curtis when he was growing up?

7 A. Yes.

8 Q. Tell me a little bit about that relationship. How
9 often you would see him?

10 A. Well, we had a good relationship. We were making,
11 I guess we had a bond there. We would see each other at
12 least once a week or more. He would either come by my house,
13 or I would meet him somewhere in the street or down at my
14 mother-in-law's. She stayed right across round the corner
15 from him, but we made contact at least once a week.

16 Q. And what type of things did y'all do on these
17 meetings?

18 A. Well, we just talked about different things. A lot
19 of times if he had a new song that he would want to try to
20 sing, he would talk to me about it, and he was a little shy
21 at first starting off. And for some reason, he thought I was
22 the best singer in the world. And I would encourage him
23 just, you know; nervous is all right. That is just part of
24 life.

25 Q. Like a mentor to him?

26 A. Yes.

27 Q. Now you told us you were a singer. Do you sing in
28 a group as well?

29 A. Yes. I am a member of the Forrest Brothers gospel

Nelson Forrest - DIRECT

singing group here from Winona.

Q. Have you ever sung with Curtis?

A. Yeah, we have been on programs with him a lot of times.

Q. Now he was in another group?

A. Right.

Q. But y'all would sing together. Did Curtis attend church with you?

A. Yes.

Q. What was it like? What was Curtis like when he was around you?

A. Well, he was happy around me. He's still happy. He had a little shyness, but, you know, he was getting over that. But it was a lot of fun. We laughed and talked, and he would tell me things he had been involved in, and we shared our deal.

Q. Do you still communicate with Curtis?

A. Well, mostly communications I have with Curtis is through his mother and father. He just send me word that not to worry about him; he all right, and to keep praying for him. That's the way we handle it.

BY MR. DE GRUY: That's all I have, Your Honor.

BY MR. EVANS: No questions.

BY THE COURT: You may step down, sir.

WITNESS EXCUSED.

BY MR. DE GRUY: Tarryon Daniels.

TARRYON DANIELS,

a black male called to testify as a witness by the Defendant in the SENTENCING PHASE, having first been duly sworn,

Tarryon Daniels - DIRECT

testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Tarryon Daniels.

DIRECT EXAMINATION BY MR. DE GRUY:

Q. Mr. Daniels, where do you live?

A. Here in Winona, 32 Powell Street.

Q. How long have you lived here?

A. All my life.

Q. And how old are you?

A. Thirty-three.

Q. And are you working now?

A. Uh-huh. Right now I'm employed in Greenwood at John Richard.

Q. How long have you been working there?

A. Seven and a half years.

Q. And you know Curtis Flowers?

A. I do.

Q. How long have you known Curtis?

A. All our life, all my life.

Q. Y'all grew up together?

A. We did.

Q. Did y'all play sports together?

A. Yeah, we played basketball together. We went fishing together, sung together.

Q. Did y'all ever work together?

A. Yeah, we worked at Richardson Brothers south across from Wal-Mart here in Winona.

Q. How long did y'all work together?

A. I'm thinking three and a half, maybe four years.

Tarryon Daniels - DIRECT

1 Q. What kind of worker was Curtis?

2 A. Curtis was a good worker. We had no complaints.
3 Everything you asked him to do, he would do it.

4 Q. Now you mentioned fish; you used to fish with him
5 and sing with him?

6 A. Uh-hum.

7 Q. Are you in, were you in a singing group with him?

8 A. I was.

9 Q. Could you tell me about that group?

10 A. It's a nice group. Like Archie said, we traveled
11 all over the world. I never did get a chance to make the
12 trips up north with them, but I sung here locally. And
13 Curtis was a good singer. He always made everybody happy
14 when he sung. When him and his father had a song together,
15 they sung and just touched on everybody.

16 Q. Are you still singing?

17 A. No, I'm not. I haven't sung since Curtis got
18 locked up.

19 Q. How come you are not singing?

20 A. Um, just don't seem right without Curtis.

21 BY MR. EVANS: Your Honor, I object. That is not
22 proper. There is specific case law that says impact
23 on defense witnesses is not proper.

24 BY THE COURT: That is a correct statement of the
25 law.

26 BY MR. DE GRUY: Your Honor, I can't ask him why
27 he quit singing? I think it goes directly to--

28 BY THE COURT: -- Why would that be relevant as
29 to why he quit singing?

Tarryon Daniels - DIRECT

1 BY MR. DE GRUY: Because if he were allowed to
2 answer, it would show a character trait of Mr.
3 Flowers.

4 BY MR. EVANS: No, sir. He is entitled to ask
5 about the Defendant, but according to Wilcher, Turner,
6 Jordan and a long line of cases, he is not allowed to
7 ask about any impact on defense witnesses.

8 BY MR. DE GRUY: I'm not asking about an impact
9 of anything this jury might do on him.

10 BY MR. EVANS: No, sir.

11 BY MR. DE GRUY: I'm asking about why he is no
12 longer singing, and it's directly related to their
13 relationship as co-members of the singing group, not
14 on anything--

15 BY THE COURT: I will allow it.

16 BY THE WITNESS:

17 A. I haven't sung in the group since Curtis left
18 because me and him used to ride together to most of the
19 programs, and it just, I just don't feel like I could do it
20 without him.

21 Q. Thank you, Tarryon.

22 BY MR. DE GRUY: That's all I have.

23 BY MR. EVANS: No questions.

24 BY THE COURT: You may step down.

25 WITNESS EXCUSED.

26 BY MR. DE GRUY: Kittery Jones.

27 KITTERY JONES,

28 a black male called to testify as a witness by the Defendant
29 on the SENTENCING PHASE, having first been duly sworn,

Kittery Jones - DIRECT

testified as follows, to-wit:

BY THE COURT: Have a seat. State your name.

BY THE WITNESS: Kittery Jones.

DIRECT EXAMINATION BY MR. DE GRUY:

Q. Mr. Jones, where do you live?

A. Here in Winona.

Q. And how long have you lived here?

A. All my life.

Q. Are you working now?

A. Yes, sir. I own my own business, heating and air conditioning and refrigeration.

Q. Do you do any other work?

A. Yes, sir. I preach the gospel of Jesus Christ.

Q. And where are you a preacher?

A. Right here in Winona.

Q. Are you related to Curtis Flowers?

A. Yes, sir.

Q. What, how are you related?

A. He is my cousin.

Q. Are you close to Curtis? Are y'all close?

A. Yes, sir.

Q. How would you characterize that relationship?

A. Well, when we was growing up, I spent majority of my time at their house. I stayed at his house just as much as I stayed at mine. We grew up together. We laughed; we played; we cried together. We just like brothers.

Q. Did y'all ever sing together?

A. No, sir. I can't sing. But I would ride with them, like if he would ask me. He would call me Spud. He

Jones - DIRECT - James Aiken - DIRECT

1 said, "Spud, you going to come to practice with us?" And I
2 tell him yeah, even though I didn't want to go, but I would
3 go. And we would ride on the back of the bus, and we would
4 just play all the way there and laugh and crack jokes.

5 BY MR. DE GRUY: That's all I have, Your Honor.

6 BY MR. EVANS: No questions.

7 BY THE COURT: You may step down.

8 WITNESS EXCUSED.

9 BY MR. DE GRUY: Your Honor, may I check on one.

10 (Mr. de Gruy confers with Ms. Ferraro.)

11 BY MR. DE GRUY: Very quickly, Your Honor. Your
12 Honor, we call Jim Aiken.

13 JAMES EVANS AIKEN,

14 a black male called to testify as a witness by the Defendant
15 in the SENTENCING PHASE, having first been duly sworn,
16 testified as follows, to-wit:

17 BY THE COURT: All right, have a seat right
18 there.

19 BY THE WITNESS: Thank you, sir.

20 BY THE COURT: State your name, please, sir.

21 BY THE WITNESS: My name is James Evans Aiken.

22 A I K E N.

23 DIRECT EXAMINATION BY MR. DE GRUY:

24 Q. Thank you, Mr. Aiken. Mr. Aiken, what is your
25 current employment?

26 A. I am president of James E. Aiken and Associates
27 Incorporated.

28 Q. And what does that company do?

29 A. It is a correctional consulting firm.

James Aiken - DIRECT

1 Q. And could you share with us your educational
2 background?

3 A. I was educated in elementary as well as high
4 schools in Camden, South Carolina. I attended Benedict
5 College in Columbia, South Carolina, to which I received a
6 degree, a Bachelor of Arts degree. And I have also received
7 a Master's degree in criminal justice from the University of
8 South Carolina that is in Columbia, South Carolina.

9 Q. And what is your background in corrections?

10 A. I started in corrections in 1971 in the capacity of
11 a social worker in the substance abuse program at a medium
12 security prison in South Carolina. This medium security
13 prison housed younger male inmates in a medium security
14 environment; that is, they were behind fences and gun towers
15 and security systems. However, they had opportunity to move
16 throughout the facility under supervision. From there I was
17 promoted to deputy warden of that same facility in South
18 Carolina. I am sorry; I was administrative assistant, then
19 deputy warden at that facility.

20 From there, I became deputy warden at the state
21 penitentiary in South Carolina. The state penitentiary,
22 which is also located in Columbia, housed the most dangerous
23 preditorial, disruptive, violent inmates, inmates that not
24 only inflicted violence in the community, but also inflicted
25 violence upon other inmates as well as the staff. This
26 facility is a maximum, super maximum security compound. It
27 also housed death row. It also housed inmate population that
28 were waiting adjudication for psychiatric evaluation. It was
29 about 1800 to 2000 inmates.

James Aiken - DIRECT

1 From there, I became the warden of the women's
2 prison, and this was also in Columbia, South Carolina. And
3 this housed maximum security female population as well as
4 medium and minimum security inmate population. From there, I
5 became deputy -- I'm sorry, from there I became warden of the
6 state penitentiary in South Carolina. And I just explained
7 to you the background of that facility and the mission of
8 that facility.

9 Also, while in the capacity of warden of that
10 facility, I was called upon to perform executions on inmates.
11 I have executed two inmates personally as well as managed the
12 death row population, as well as disruptive inmate
13 population--

14 BY MR. EVANS: -- Your Honor.

15 BY THE COURT: Wait just a minute.

16 BY MR. EVANS: Your Honor, I would -- and I was
17 going to go ahead and wait until later, but I would
18 object to any testimony that this witness has. We
19 have been furnished information that he is expected to
20 testify as to future dangerousness and adaptability to
21 prison life. The cases are very clear-- Hansen,
22 Skipper v. South Carolina, Jordan v. State. This is
23 not proper or relevant testimony for this jury to
24 hear, and we would object to this witness testifying
25 about any of the information that we have been
26 furnished that they expect him to testify to related
27 to that.

28 BY MR. DE GRUY: Your Honor, it is absolutely
29 relevant, and I suggest that the District Attorney

James Aiken - DIRECT

1 read Skipper v. South Carolina. It is precisely what
2 the Court said must be presented in the way of
3 mitigation.

4 BY THE COURT: Well, how does it get around
5 Wilcher?

6 BY MR. DE GRUY: Two things--

7 BY THE COURT: Where they were trying to show
8 photographs of Parchman and death row, maximum
9 security, testimony of prior prison officials.
10 Wilcher held such evidence has no relation to the
11 Defendant's character, his record, or the
12 circumstances of the crime.

13 BY MR. DE GRUY: Your Honor, we are exactly going
14 to get to this man's character and his adaptability to
15 prison. And it is absolutely proper, and that is what
16 Skipper holds. And we are not talking about trying to
17 show pictures of Parchman. We are trying to explain
18 to this jury based on Mr. Aiken's evaluation of Mr.
19 Flowers.

20 BY THE COURT: Has he made a personal evaluation
21 of him?

22 BY MR. DE GRUY: Yes, he has, Your Honor.

23 BY THE COURT: Okay. Well, let's get it to that
24 point, and then Mr. Evans, you may make another
25 objection. But right now, this has got nothing to do
26 with this because he has not stated his relationship
27 to Mr. Flowers. So you have got to make it specific
28 to get--

29 BY MR. DE GRUY: -- We have to lay our foundation

James Aiken - DIRECT

1 for his ability to make this evaluation, Your Honor,
2 and that's what we were attempting to do.

3 BY MR. EVANS: Which so far, we are objecting to
4 that because they have not done that.

5 BY MR. DE GRUY: And we haven't tendered him yet.
6 If we could have a little patience from the District
7 Attorney.

8 BY MR. EVANS: Your Honor, I object to that in
9 the record. That is not proper.

10 BY THE COURT: Well, you need to go ahead--

11 BY MR. DE GRUY: -- He is objecting to a witness
12 not being tendered prior to his being tendered, and he
13 is objecting to us laying the foundation. You can't
14 object to us not having laid the foundation--

15 BY THE COURT: -- Are you going to tender him as
16 an expert?

17 BY MR. DE GRUY: Yes, Your Honor.

18 BY THE COURT: Okay. Well, go ahead.

19 BY MR. DE GRUY:

20 Q. I am sorry, Mr. Aiken. If you can recall where you
21 were in sharing your background with us?

22 A. Yes. I was warden of the state penitentiary in
23 South Carolina which housed, as I was stating, death row
24 population as well as the most violent inmate population in
25 the State of South Carolina. From there, I became deputy
26 regional administrator, which I supervised 16 various prisons
27 within the South Carolina Department of Corrections to
28 include women's prisons, males' prisons, maximum, super
29 maximum, all the way down to minimum security facilities.

James Aiken - DIRECT

1 From there, I became Commissioner of Corrections or
2 Director of Corrections for the State of Indiana at which
3 time I had under my control as the chief executive officer
4 over 46, 47 facilities. And that ranged from juvenile
5 facilities, male facilities, adult facilities, female
6 facilities, as well as parole services and community
7 corrections.

8 And I might go back a little bit. Back in 1986, I
9 was asked by the United States Justice Department to begin
10 providing technical assistance and expert consultation to
11 other jurisdictions. And that included me in being involved
12 in teaching wardens how to be wardens of prisons, teaching
13 wardens how to be wardens of super maximum security prisons,
14 teaching leadership development, development of
15 classification systems within prison systems as well as jail
16 systems, hostage negotiations, critical event; that is,
17 hostage situations, riots, et cetera, how to prevent them.
18 Also, I was involved in providing this technical assistance
19 to just about every jurisdiction in the United States to
20 include Alaska as well as Hawaii, and the State of
21 Mississippi.

22 I have also, I might add that my experience
23 involved the classification of inmate population. And what I
24 mean by that, putting them in the proper management, proper
25 security, proper programming to insure the safety and well
26 being of staff, other inmates, as well as the general
27 community. And I have done this thousands and thousands of
28 times personally as well as to devise as well as to evaluate
29 other systems.

James Aiken - DIRECT

1 Getting back to my career, also when I left
2 Indiana, I became Director or Commissioner of the Department
3 of Corrections for the United States Virgin Islands which
4 gave me an opportunity to not only look at prisons on a
5 national level, but also an international level.

6 And as I stated at the beginning, I am president of
7 James E. Aiken and Associates, and I have provided technical
8 assistance, expert assistance in relationship to managing
9 prisons, not only in the United States but also in Costa
10 Rica, Puerto Rico, of course, in the Virgin Islands, Canada,
11 and the Dutch Kingdom.

12 Q. Okay. Have you ever made assessments of
13 classifications in corrections practices here in Mississippi?

14 A. Yes. I have provided technical assistance to the
15 State of Mississippi on site as well as at the National
16 Academy of Corrections as well as other off-sites in
17 relationship to not only classification of inmate population,
18 but managing prison security systems.

19 Q. In your 30 plus years in corrections, have you ever
20 been qualified as an expert in corrections in classification
21 of inmates?

22 A. Yes, I have, sir.

23 Q. Can you tell us how many times?

24 A. Oh, I would say 30 to 40 times, 35 or 40.

25 Q. And what jurisdictions have you been accepted as an
26 expert in?

27 A. I have been accepted as an expert in judicial
28 proceedings in the State of Florida, the State of Georgia,
29 the State of South Carolina, the State of North Carolina, the

James Aiken - DIRECT

1 State of Virginia, the State of Alabama, the State of
2 Mississippi, the State of Missouri, the State of Louisiana,
3 the State of Florida--I mean Arizona, United States District
4 Court of Connecticut, United States District Court of
5 District of Columbia, United States District Court of
6 Georgia, United States District Court of Alabama.

7 BY MR. DE GRUY: Your Honor, at this time we
8 tender Mr. Aiken as an expert in classification of
9 inmates and correction procedures.

10 BY MR. EVANS: Your Honor, the State would renew
11 its objection. This expertise, even if he be an
12 expert, has nothing to do with this particular
13 hearing. The cases are very clear. Only an expert
14 that has been accepted as an expert in the field of
15 future behavior is qualified to testify. And as this
16 Court is familiar in Eskridge v. State, which this
17 Court tried, in that particular case there was even a
18 psychologist that the Supreme Court said could not
19 testify in that particular case because he was not
20 even an expert in the field of future behavior. Any
21 expertise in prison classification is irrelevant to
22 what we are here on today, and I would again object.

23 BY MR. DE GRUY: I have one question.

24 BY MR. DE GRUY:

25 Q. Mr. Aiken, is part of making a classification
26 decision, does it involve making a decision on future
27 dangerousness of an inmate?

28 A. Yes.

29 BY MR. DE GRUY: We would again tender Mr. Aiken

James Aiken - DIRECT

1 as an expert. And the Eskridge case, Your Honor, I am
2 sure both you and Mr. Evans are more familiar with it.
3 But in that case the psychologist had never evaluated
4 Mr. Eskridge and could give nothing, no -- nor his
5 records, and the problem was, is that in Eskridge they
6 were trying to talk about generalities. We are not
7 talking about generalities or what it would be like in
8 prison. We are talking about Mr. Flowers and how, how
9 he has conducted himself in prison.

10 BY THE COURT: At this point in his testimony, I
11 will accept him as an expert in the field of prison
12 classification. As to his expertise in future
13 behavior, I think you need to establish that a little
14 bit further than what you have done, and I think he
15 needs to be tendered--

16 BY MR. EVANS: --And I would like to voir dire
17 him, Your Honor.

18 BY THE COURT: Okay, well, I'm going to let
19 him -- I'm going to let you finish first, okay.

20 BY MR. DE GRUY:

21 Q. Mr. Aiken, in determining classification, making
22 classification decisions, and you have testified that you
23 develop plans and assist states like Mississippi in improving
24 plans for the classification of inmates. Is a part of that,
25 a subgroup of that expertise, does it require the assessment
26 of future dangerousness?

27 A. That is correct. What you do is assess the
28 individual's history, age, as well as a number of other
29 factors, and you determine what is the information that is

James Aiken - DIRECT

1 gathered in relationship to how this person is going to
2 behave from here on in this type of prison environment, and
3 what type of management, what type of security, what type of
4 program addict interventions that you need in order to
5 prevent future dangerousness or to control future
6 dangerousness as well as to anticipate the probability of
7 what type of future dangerousness this individual represents
8 while in the correctional setting.

9 Q. And as a warden and a classification supervisor,
10 that person has the responsibility of protecting their
11 employees as well as the public and other inmates; is that
12 correct?

13 A. That is correct. Classification is looking into
14 the future. The classification is looking at a set of
15 information and data, making the determination on that
16 information and data in relationship to what this individual
17 is capable of doing in the future while in this environment.

18 Q. So when you say this environment, you are talking
19 about institutionalized?

20 A. That is correct.

21 Q. So is it fair to say that if you, that the
22 determination of the future dangerousness of an inmate is
23 critical to the classification process?

24 A. It's essential as well as critical. It is the
25 foundation for people managing prisons. It is the backbone,
26 looking at previous behavior or lack thereof and making a
27 determination in relationship to future behavior.

28 BY MR. DE GRUY: Your Honor, I believe Mr. Evans
29 has some questions.

James Aiken - Voir Dire

1 **BY THE COURT:** Mr. Evans.

2 **BY MR. EVANS:** Yes, sir.

3 VOIR DIRE EXAMINATION BY MR. EVANS:

4 Q. Mr. Aiken, just a few questions. What type of
5 educational background do you have in either the field of
6 psychology or psychiatry?

7 A. I have taken courses in my undergraduate studies
8 that had relationship to human behavior as well as received
9 training obviously within the Department of Corrections that
10 I have worked in, in relationship to future dangerousness as
11 well as the psychological history of individuals and to
12 evaluate that from a prison operational perspective and not a
13 clinical perspective.

14 Q. So you have no degrees in psychology or psychiatry?

15 A. That is correct, sir.

16 Q. And no formal training other than undergraduate
17 courses?

18 A. That is correct other than the formal training that
19 I received in my course of employment to interpret the
20 psychological records of inmate population from an
21 operational standpoint.

22 Q. And that is just basically as a prison official; is
23 that correct?

24 A. As a prison official and receiving the expertise
25 and training as well as teaching that to other correctional
26 professionals; yes, sir.

27 Q. You do not even claim to hold any expertise in
28 psychiatry or psychology, do you?

29 A. I'm not board certified; no, sir.

James Aiken - Voir Dire

1 Q. Well, not only are you not board certified, you
2 don't hold any kind of degrees in that, do you?

3 BY MR. DE GRUY: Your Honor, he hasn't been
4 tendered as an expert in psychology or psychiatry. I
5 don't understand the questions.

6 BY THE COURT: Well, certainly what you are
7 wanting him to testify to has some relationship to
8 those disciplines, so I'm going to let him voir dire.

9 BY MR. EVANS:

10 Q. You hold no degrees as a psychologist or
11 psychiatrist, do you?

12 A. That is correct, sir.

13 Q. How many times have you been with the Defendant?

14 A. One time, sir.

15 Q. For how long?

16 BY THE COURT: Now right now you are just voir
17 diring him or whether he is an expert or not.

18 BY MR. EVANS: All right, sir.

19 BY THE COURT: That is another question.

20 BY MR. EVANS: Okay. I didn't know if the Court
21 wanted to go ahead and cover that at this time or not.

22 BY THE COURT: No, not at this time.

23 BY MR. EVANS: All right. Your Honor, I think as
24 far as just voir diring on this part, that's all I
25 have.

26 BY THE COURT: What are you tendering him as?

27 BY MR. DE GRUY: As an expert in classification
28 of inmates and the determination of future
29 dangerousness and the operation of correctional

James Aiken - Continued Direct
facilities.

BY THE COURT: I think in light of his educational background and his past experience, he is qualified to testify in that field as an expert. However, his testimony in this case must not be generalizations but case specific.

BY MR. DE GRUY: Yes, Your Honor.

BY THE WITNESS: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION BY MR. DE GRUY:

Q. Mr. Aiken, with respect to this case, have you reviewed Mr. Flowers' prison and jail records?

A. Yes, I have.

Q. And have you interviewed Mr. Flowers?

A. Yes, I have.

Q. Are these the things you normally do in the classification process of an individual?

A. That is correct. The only possible exception of it is that I don't interview every inmate that I am making a classification decision on. And I have found that my proficiency in proper classifying inmate population was not diminished in relationship to whether I interviewed or didn't interview that particular inmate.

Q. Can you estimate over your career and maybe you have mentioned this; how many times you have classified inmates?

A. Literally thousands and thousands of times.

Q. And I believe you just testified that you don't always have an opportunity to interview in making that -- is that just done on records?

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1921-2019

VOLUME 21 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

James Aiken - Continued Direct

1 A. What we do, yes, sir, is to review the official
2 records, those people that are qualified as well as
3 responsible for the safety and custody and security of the
4 inmate. What they say about the inmate, I value, yes.

5 Q. And I believe you testified you have developed and
6 evaluated classification systems?

7 A. That is correct. Not only -- and I don't want to
8 get too technical, but objective classification systems which
9 people commonly know as maximum security, medium security, or
10 minimum security as well as internal classification systems
11 in relationship to the person's assignment within a facility.

12 Q. Now you have been asked about your expertise in
13 psychology or psychiatry. In the corrections process, is it
14 normal to rely on records from those type of professionals?

15 A. It is normal to review those records collectively
16 as well as other variables and make a determination in
17 relationship to operational aspects of a prison. But as far
18 having the clinical qualifications as a psychiatrist,
19 psychiatric evaluation, and making a diagnosis, no.

20 Q. So in all of these prisons that you have worked in
21 around the country and here in Mississippi, is it a
22 psychologist or a psychiatrist who determines classification,
23 or is it a corrections professional?

24 A. Corrections professional.

25 Q. And you have already mentioned that you reviewed
26 the behavioral records of Mr. Flowers. Did you also, did you
27 review any medical records?

28 A. Yes, I did.

29 Q. And did that include psychological testing, or do

James Aiken - Continued Direct

1 you know?

2 A. If I remember correctly, it did have some reference
3 to some psychological issues such as attempted suicide or
4 something of that nature; yes, sir.

5 Q. He was evaluated while, when he was taken into the
6 system previously?

7 A. Yes, sir. It's a common component of a
8 classification process to look at some type of psychological
9 status of an inmate coming into the system.

10 Q. What is the better predictor of future
11 institutional behavior, behavior in the community prior to
12 incarceration or behavior while incarcerated?

13 A. In laymen's terms your community behavior is a
14 better predictor of future community behavior. Your prison
15 behavior is a better predictor of your future prison
16 behavior.

17 Q. From your review of the records, can you tell us
18 how long Mr. Flowers was institutionalized?

19 A. For at least seven years, six or seven years, yes.

20 Q. And in that time has he spent most of that time in
21 what is called close security?

22 A. That is correct.

23 Q. Could you tell us what close security is?

24 A. Close security is a custom. You have maximum
25 security; then you have close security, and it's a highly
26 supervised environment. It's a very high secure environment
27 where staff has total control, where staff always has a
28 visual line of sight to you and know your whereabouts 24
29 hours a day, seven days a week. And usually in this

James Aiken - Continued Direct

1 environment you are housed with very dangerous, predatorial,
2 violent inmate population.

3 Q. Can you tell us how many significant rule
4 violations the average close security inmate would have?

5 BY MR. EVANS: Your Honor, that is not relevant.

6 BY THE COURT: I'm sorry; I didn't hear your
7 question.

8 BY MR. DE GRUY: I'm asking him if based on his
9 experience, he could tell me what an average or
10 typical number of significant rule violations for a
11 closed security inmate?

12 BY MR. EVANS: That can't have any relevance to
13 this--

14 BY MR. DE GRUY: -- It absolutely does because
15 otherwise the jury is going to hear about Mr. Flowers
16 in a vacuum. They won't know what context to put in
17 his particular record.

18 BY THE COURT: Okay. I will allow it.

19 BY THE WITNESS:

20 A. Would you mind repeating the question, please.

21 Q. Yes. Can you tell us how many significant rule
22 violations the average or the typical close security inmate
23 would have?

24 A. It would not be uncommon for an inmate in a maximum
25 or close security to have 30, 40, 50 write-ups over a period
26 of time of five to seven or ten years. And the reason why is
27 not necessarily the person is bad, but he is constantly under
28 supervision. And people in these environments that are
29 supervising these environments, they document everything.

James Aiken - Continued Direct

1 Every rule violation, every incident is documented.

2 Q. In reviewing the files of Mr. Flowers over his
3 years in jail and in prison and particularly, in prison; that
4 is where he has been in close security. How many significant
5 disciplinary violations has he had?

6 A. Zero.

7 Q. Is that unusual?

8 A. That is exceptional to say the least. It's a
9 miracle for a person to be able to live in this very
10 volatile, dangerous environment with constant supervision
11 from security staff and not be written up or documented for
12 any violation or rules regulations, policy procedures, or
13 criminal violations while incarcerated.

14 Q. And you said you interviewed Mr. Flowers as part of
15 the, what would be the classification process. What did you
16 learn about him from that interview?

17 A. The purpose of my interview is to further validate
18 what I have already read in the records. Also, it was of
19 great interest to me to see this type of person that it was
20 disciplinary free for such a period of time within this close
21 environment because I quite honestly, have not seen anyone I
22 don't think, maybe one or two in my whole career that has
23 survived like that. And I found an individual that responded
24 with all respect, an individual that knew in a prison
25 environment you follow the rules and regulations and you do
26 what you were told when you were told to do it. As well as
27 to understand that other people around you, and this is from
28 Mr. Flowers to which is further validated in the record, you
29 just suck it up, and you take it. You take throwing cold

James Aiken - Continued Direct

1 water or hot water on you, and you don't say anything.

2 BY MR. EVANS: Your Honor, I object. That is not
3 proper, and he knows it's not.

4 BY THE COURT: Sustained unless it is backed up
5 by some evidence. There is nothing in this record
6 that would indicate that occurred.

7 BY MR. DE GRUY:

8 Q. Mr. Aiken, we will move on. But what you are
9 testifying to is based on your interview and your review of
10 the records?

11 A. That is correct. What I received directly from
12 Mr. Flowers on last evening.

13 Q. And I will move on to the next question. You are
14 familiar with the Mississippi classification system?

15 A. Yes, I have familiarity with it, and it's not
16 unusual with other classification systems within the United
17 States.

18 Q. Is there a certain level of security a person would
19 receive based on the crime of conviction?

20 A. Yes. And what that basically means with
21 Mr. Flowers is I don't care how good he is. I don't care how
22 he complies with the rules and regulations. His community
23 behavior, the criminal acts in which he has been convicted of
24 will prevent him from being exposed to the community again.
25 And that is forever, as long as he is living. It prevents
26 him no matter how good he is from going to a minimum security
27 or trying to get him back into the community because that is
28 taken off the table now. He is in prison not for
29 rehabilitation--

James Aiken - Continued Direct

1 BY MR. EVANS: -- Your Honor, again I'm going to
2 have to object--

3 BY THE WITNESS: --He is in prison for
4 incapacitation--

5 BY MR. EVANS: This is directly relation to
6 Wilcher. It is not proper. It is irrelevant to what
7 we are doing here.

8 BY THE COURT: That is sustained as to that type
9 of testimony.

10 BY MR. DE GRUY: I'm sorry, Your Honor.

11 BY MR. DE GRUY:

12 Q. Now you are talking about where Mr. Flowers, not in
13 general, where Mr. Flowers, where his classification falls.

14 BY MR. EVANS: Same objection on relevance.

15 BY THE COURT: That is sustained.

16 BY MR. DE GRUY: I think it goes directly to
17 future dangerousness.

18 BY THE COURT: Well, it flies right in the face
19 of the case law, Mr. de Gruy, also in relation to that
20 specific part of his testimony about sentencing and
21 what that means, I mean what that sentence means.

22 BY MR. DE GRUY: Your Honor, certainly everyone
23 would agree that the only options are death or life
24 without parole. So that is--

25 BY MR. EVANS: -- Your Honor, I would ask that he
26 ask questions and not testify at this point.

27 BY THE COURT: I have sustained the objection.
28 Let's move on.

29 BY MR. DE GRUY: Your Honor, just so I am clear

James Aiken - Continued Direct

1 on this, I'm not going to be allowed to ask this
2 witness about what maximum security conditions are?

3 **BY THE COURT:** No, I didn't say that.

4 BY MR. DE GRUY:

5 Q. Okay. Could you describe to us -- you have said
6 that Mr. Flowers would be placed in maximum security. Could
7 you describe for us what maximum security is?

8 A. Yes. Maximum security is an environment that is
9 super secure. Of course, we know about the fences and the
10 gun towers as well as the correctional staff that are
11 specially trained to manage this population. They have the
12 equipment; they have the training to control this individual
13 in just about any behavior this individual would possibly
14 demonstrate. Additionally, they are authorized to use lethal
15 force if required; that is; they can kill an inmate if that
16 inmate does not conform to a certain standard of behavior if
17 required. Also, they have total control as to where that
18 inmate goes, what that inmate eats, who that inmate talks to.
19 They can go through his personal belongings. They can go
20 through his personal body, if required, to insure that this
21 individual is safe as well as will not pose a future
22 dangerousness to other inmate population, staff, as well as
23 the community.

24 Q. If you were the warden supervising Curtis Flowers
25 in prison under a sentence of life without parole, would
26 Curtis be a person that you would have concerns for your
27 staff or anyone else's safety?

28 A. No, sir.

29 **BY MR. EVANS:** Your Honor, I don't think that is

James Aiken - DIRECT - CROSS

1 relevant.

2 BY THE COURT: I think in the light of the way I
3 qualified him, he can -- that would be a question
4 about future behavior.

5 BY THE WITNESS:

6 A. The answer to that question is yes. I would feel
7 very comfortable keeping this individual in my prison as the
8 warden without him posing a risk of harm to staff, inmates,
9 as well as the general community, and I have supervised
10 people like that for many years.

11 BY MR. DE GRUY: I have no further questions.

12 CROSS-EXAMINATION BY MR. EVANS:

13 Q. How many times did you say you have talked to the
14 Defendant?

15 A. One time, sir.

16 Q. When was that?

17 A. Last evening.

18 Q. For how long?

19 A. I would say 40 minutes at the max.

20 Q. So you are basing your information on him on a 40
21 minute interview?

22 A. That is not correct, sir.

23 Q. Well, how many other times have you talked to him?

24 A. I didn't base my opinion on just an interview.

25 Q. How many other times have you talked to him?

26 A. None.

27 Q. How many other inmates in maximum security at
28 Parchman have you checked records?

29 A. I have not reviewed individual records of inmates

James Aiken - CROSS

1 at Parchman.

2 Q. Oh, so you don't know whether anybody else over
3 there has any violations or not then, do you?

4 A. Not from that standpoint, sir, but in my being here
5 and providing technical assistance, it is of personal
6 knowledge that inmates that are in that type of facility have
7 a number of write-ups, at least a certain segment of that
8 population.

9 Q. Mississippi Penitentiary at Parchman, how many of
10 them there have you checked their records?

11 A. I have not checked their records, sir.

12 Q. And you are attempting to guess at what his future
13 dangerousness is; is that right?

14 A. No, sir. I am not guessing.

15 Q. Oh, you are not; you know? You can read minds?

16 A. No, sir. What we are saying in this profession is
17 no, we cannot predict human behavior in absolute terms. I
18 don't think anyone can do that. But what I am saying is that
19 we have gotten very proficient at better predicting human
20 behavior.

21 Q. Of course, you don't predict it at Parchman, do
22 you?

23 A. No, sir.

24 Q. In your evaluation, what you have been furnished to
25 look at, were you told about the facts of this crime?

26 A. Yes, sir.

27 Q. Were you told that four innocent individuals were
28 shot in the head and murdered?

29 A. Yes, sir.

James Aiken - CROSS

1 **BY MR. EVANS:** One second, Your Honor.

2 (Mr. Evans gets out easel and puts boards of
3 pictures on them.)

4 Q. I want to show you several different photographs.
5 To start with I will show you Exhibit 16A, 17A, 19A, 18A,
6 12A, 15A, 13A, 14A, 21A, 20A, 23A, and 22A. And I will ask
7 that you look at these photographs if you would?

8 **BY THE WITNESS:** Your Honor, may I have
9 permission to walk over and look at them?

10 **BY THE COURT:** Yes, sir.

11 **BY THE WITNESS:** Thank you.

12 (Long pause while witness walks over to
13 photographs, looks at them, and then resumes witness stand.)
14 **BY MR. EVANS:**

15 Q. Have you had an opportunity to look at those
16 pictures?

17 A. Yes, sir.

18 Q. Can you tell me how you can say that somebody that
19 can commit crimes like this would not be future dangerous?

20 A. To the community, yes, sir. In a prison
21 environment, I can manage that type of population.

22 Q. You can?

23 A. When I say I, I'm talking about correctional
24 facilities throughout the United States can manage this type
25 of population, especially when you look at his particular
26 record within a correctional environment.

27 Q. It's different when you have got somebody watching
28 you all the time, isn't it?

29 A. Yes, sir.

James Aiken - CROSS

1 Q. Would you agree with me that a person that could
2 commit that type of crime is going to be always dangerous?

3 A. To the community, yes, sir.

4 BY MR. EVANS: Your Honor, I have nothing further
5 of this witness.

6 BY MR. DE GRUY: No questions, Your Honor.

7 BY THE COURT: Is he finally excused?

8 BY MR. DE GRUY: Yes, he is finally excused.

9 BY THE COURT: You are free to go, sir.

10 BY THE WITNESS: Thank you, sir.

11 WITNESS EXCUSED.

12 BY THE COURT: Who will you have next?

13 BY MR. DE GRUY: Your Honor, the Defense rests.

14 DEFENDANT RESTS ON SENTENCING PHASE.

15 BY THE COURT: Anything else, Mr. Evans?

16 BY MR. EVANS: No, sir.

17 BOTH SIDES FINALLY REST.

18 BY THE COURT: Ladies and gentlemen, that
19 completes the testimony at this stage of the trial. I
20 will ask you to go to the jury room. I have to
21 consider some instructions to give you before the
22 lawyers argue this case as we did in the first phase
23 of the trial. These will take me a little time, so I
24 will call you when we get it done, and we will come
25 back, and I will read them to you, and they can argue
26 the case.

27 JURY LEFT THE COURTROOM.

28 (CONSIDERATION OF JURY INSTRUCTIONS FOR THE
29 SENTENCING PHASE WITH THE JURY OUT AS FOLLOWS:)

Consideration of Instructions - JURY OUT

1 **BY THE COURT:** Do I even have y'all's
2 instructions? I don't think I do.

3 **BY MR. HILL:** These are as good a state as I can
4 get them in at this time.

5 **BY MR. DE GRUY:** Do you have copies for me?

6 (State's and Defense Counsel confer out of the
7 hearing of the Court Reporter.)

8 SENTENCING INSTRUCTION NO. 1: **BY THE COURT:** Okay,
9 in relation to the State's sentencing instruction number 1,
10 there are four of them, I think. Well, I know there are. I
11 think they will all contain the same language. What do you
12 say Mr. de Gruy? I know they have got, as far as mitigating
13 circumstances, they have got to have some discussion, but
14 what about the rest of it?

15 **BY MR. DE GRUY:** First, we have submitted DS-1A
16 through D which it's our position that is a correct statement
17 of the law. It is essentially the same as the one they have
18 proposed, and that is the instruction that we are asking for.
19 But as to this, this instruction, our first objection is on
20 the listing of the aggravating circumstances. I'm sorry;
21 would you like me to stand to argue?

22 **BY THE COURT:** That--

23 **BY MR. DE GRUY:** I apologize.

24 **BY THE COURT:** That is all right.

25 **BY MR. DE GRUY:** They have condensed two
26 statutory aggravators into one and enumerated it as one
27 aggravator. The capital offense was committed for pecuniary
28 gain. That is an aggravating circumstance under the statute.
29 That the capital offense was committed during the course of a

Consideration of Instructions - JURY OUT

1 robbery is a second, a separate aggravating circumstance.

2 The Mississippi Supreme Court has clearly said you can't give
3 the two together, and therefore, if you can't give them
4 together enumerated as one and two, you shouldn't be able to
5 give them together in one instruction. And we have statutory
6 aggravating circumstances. They are limited to statutory
7 aggravating circumstances, and they must follow the language
8 of that statute, and they can't get around the willing rule
9 by combining them in one sentence.

10 **BY MR. EVANS:** Your Honor, specifically on that,
11 this is the way that our State Supreme Court has directed
12 that it be given. They are saying that it should not be
13 given separately; they should be given together.
14 Specifically, in a murder for robbery case, the aggravating
15 circumstance should read: "The capital offense was committed
16 for pecuniary gain during the course of a robbery." Simons
17 v. State, 805 So.2d 452; Turner v. State, 732 So.2d 937;
18 Irving v. State, 441 So.2d 846. And a long line of cases
19 specifically state that that is the way that the aggravating
20 factors should be given.

21 **BY THE COURT:** That's what the law says.

22 **BY MR. DE GRUY:** Your Honor, so the record is
23 clear, our objection is based on the Eighth and Fourteenth
24 Amendment as well as the state constitution, and our position
25 is as previously stated.

26 **BY THE COURT:** Okay. But the case law is that it
27 should not be done the way you have indicated, that it should
28 be done in the way this is done.

29 **BY MR. DE GRUY:** So it's clear, I'm not

Consideration of Instructions - JURY OUT

1 advocating that it be listed as one and two. I am saying
2 they cannot be listed in the same case.

3 **BY THE COURT:** Okay. Well, that is not the law,
4 so that objection is overruled. Okay, is that the only
5 objection as to the aggravating circumstance?

6 **BY MR. DE GRUY:** No, Your Honor. The aggravating
7 circumstance that is listed here is not an aggravating
8 circumstance that was submitted in the prior trials. We
9 covered this at pretrial; that the aggravating circumstances
10 that were to be submitted were the aggravators that had been
11 previously submitted. And also, there is absolutely no
12 evidence that this offense was committed to avoid arrest.

13 **BY MR. EVANS:** Your Honor, specifically on that,
14 we did not go into that on the other trials because we
15 were -- I think we did on one of them, but it was because we
16 were trying separate cases. In this case we are trying all
17 four deaths together. The fact that all four people in the
18 store were killed, I think, is in itself evidence of the fact
19 that he was killing everybody there so that he wouldn't be
20 apprehended. There would be no witnesses left. So I think
21 specifically this aggravating circumstance has been covered
22 in the facts and is appropriate in this case.

23 **BY THE COURT:** It may be, but we have pretrial
24 motions on this case. And the motion was for the State to
25 designate what the aggravating factors were, and at that time
26 the statement was made by the State that the aggravating
27 factors would be the same as what it had been in the earlier
28 trials. And based on that, I don't think you can use it in
29 this case. They have no notice that you were going to use

Consideration of Instructions - JURY OUT

that until this time.

BY MR. EVANS: Your Honor, the law is clear in this state that we are not required to produce aggravating factors until the case is over and the Court can determine whether they were proven during the case. We covered that before. We told them that we would -- now I think I specifically stated that we were not required to prove them, that once the case was over, we would determine what we were going to use. I think we may have used that in one of the others; I'm not sure. I know it was submitted in discovery that it would be used in the other cases. And the law is clear that it's to be determined by the Court if it's a factor that came out in this trial.

BY MR. CARTER: Well, that doesn't reflect my memory, Your Honor, and I was at the hearing.

BY MR. EVANS: And the Court overruled their motion on that, Your Honor, specifically stating that it was something that had to be determined during the trial.

BY MR. CARTER: That doesn't reflect my memory either.

BY THE COURT: My memory is that the State made an affirmative statement at that time that they were going to use the aggravating circumstances or the aggravators that they used in the previous trials. If you have used it in a previous trial, I will allow you to use it in this trial. If you didn't, I'm not going to allow it. So y'all can determine that in a minute.

Okay. Mitigators. Well, was that all? I guess that was--

Consideration of Instructions - JURY OUT

1 **BY MR. DE GRUY:** --Yes, Your Honor.

2 **BY THE COURT:** There are no other aggravators.

3 **BY MR. DE GRUY:** Yes, Your Honor. We have
4 submitted in the, in our instruction a list of the mitigating
5 circumstances, and we have also, in the event the Court
6 refuses DS-1A through D, we have also submitted a list of
7 mitigating circumstances instruction listing mitigating
8 circumstances.

9 **BY THE COURT:** Okay, I'm going to use the form,
10 the long form that lists, tells the jury what they have to do
11 as designated in Sentencing Instruction for the State 1.
12 That lists the factors that they must consider, how they go
13 about it, which is essentially the same instruction that
14 y'all have submitted. In that I'm going to list the
15 aggravating circumstances that they can consider. I am going
16 to also list the Inman factors that they must consider, what
17 their different verdicts can be.

18 And also, I'm going to list in that the mitigators.
19 I am not going to give a separate instruction on the
20 mitigating factors. Whatever mitigating factors will be
21 submitted to the jury will be submitted in this instruction.
22 So I need to know which ones you want.

23 One, I will go over what you have got on your
24 instruction, and let's see where we are. "Curtis Flowers has
25 no history of prior criminal activity." The State has got no
26 objection to that one, do they?

27 **BY MR. EVANS:** No, sir.

28 **BY THE COURT:** Okay. The next one, "Mr. Flowers
29 has an excellent prison record." The only testimony we have

Consideration of Instructions - JURY OUT

1 about that one way or another is that he does not have any
2 violations while he was in there.

3 BY MR. EVANS: And--

4 BY THE COURT: -- Whether excellent is a correct
5 statement is another story.

6 BY MR. EVANS: And I don't know that anybody has
7 actually said that they have seen his record.

8 BY THE COURT: No, I think Mr. Aiken said he had
9 seen--

10 BY MR. DE GRUY: --We had testimony this morning.

11 BY THE COURT: Yeah, he did that.

12 BY MR. EVANS: Well, if you believe him.

13 BY THE COURT: Well, that is for the jury.

14 BY MR. EVANS: I think it should at least reflect
15 the area that he said that he has no record of rules
16 violations or something like that.

17 BY THE COURT: I think that is what his testimony
18 was. We do not know what other records there might be in
19 relation to his prison record where you could necessarily
20 describe it as excellent. You could describe what he said,
21 what his examination showed. It will be up to the jury to
22 determine whether that is excellent or not. And I don't
23 believe he testified it was excellent. He just testified it
24 was exceptional and that he had no rules violations. So I
25 will submit it with that, amended to that form.

26 BY MR. DE GRUY: We would -- so the Court is
27 saying we can substitute the word "exceptional"?

28 BY THE COURT: Well, no.

29 BY MR. DE GRUY: Well, that is what he testified

Consideration of Instructions - JURY OUT

1 to.

2 **BY MR. EVANS:** Which that is--

3 **BY THE COURT:** -- Well, no, I don't think that is
4 exactly what he said. He said he had never seen many like
5 that, and he might have seen one or two in his life. What he
6 said was, he testified to that; that what he testified to was
7 that he had no rules violation in the six or seven years that
8 he was there, and he found -- you can put in there that he
9 found that -- he found to be unique, I guess would be a
10 description of it.

11 **BY MR. EVANS:** And again, Your Honor, that is
12 based entirely on his opinion, which I think is not proper.
13 He can testify what the record is, but I think his opinion
14 would not be a proper thing to submit to this jury.

15 **BY THE COURT:** He was qualified as an expert. He
16 has the right to give his opinion as to whether or not that
17 is a good record or a bad record. He did not testify it was
18 excellent. He probably did, you probably could get it to
19 where it was good or bad.

20 **BY MR. EVANS:** I have no objection to putting in
21 there that he has had a good prison record.

22 **BY THE COURT:** With no rules violations. How
23 about that?

24 **BY MR. EVANS:** I do not object to that.

25 **BY MR. DE GRUY:** Okay.

26 **BY THE COURT:** All right. Are y'all making
27 notes?

28 (No audible response from either counsel.)

29 **BY THE COURT:** In the next one, I think the last

Consideration of Instructions - JURY OUT

1 one, I think what is in evidence is that he does follow the
2 rules and regulations of prison. I don't know that there is
3 anything in the record that he is willing to work or that he
4 helps others in the prison.

5 **BY MR. EVANS:** Even further, Your Honor,
6 basically the way I understood the testimony is he does what
7 he is told because he has no choice.

8 **BY THE COURT:** Well, there again that's -- but
9 it's something for the jury to evaluate there. That's their
10 province. I'm just talking about what the facts show, and
11 that is an evaluation of the facts. I think what needs to
12 come out is "willing to work" because it's not, there is no
13 proof to that effect. And "he helps others in the prison"; I
14 don't recall any testimony to that effect. Other than that,
15 I think that--

16 **BY MR. HILL:** -- Aren't "B" and "C" then, Your
17 Honor, exactly the same?

18 **BY THE COURT:** But I'm going to allow both. Now,
19 how about "D"? You couldn't make an argument on that basis,
20 either one of you.

21 **BY MR. EVANS:** I don't think it's an appropriate
22 mitigator. I think it's something he can argue, but I do not
23 think it's an appropriate mitigator.

24 **BY THE COURT:** Well, there is some case law to
25 the effect you can't argue.

26 **BY MR. EVANS:** Yes, sir. And if even the Court
27 allowed him to argue it, I don't think it's a proper
28 mitigator.

29 (State's Counsel confer briefly.)

Consideration of Instructions - JURY OUT

1 **BY MR. EVANS:** Yeah. The instruction itself, I
2 think--

3 **BY THE COURT:** -- where it has the life
4 imprisonment stuff?

5 **BY MR. EVANS:** Yes, sir.

6 **BY THE COURT:** Okay. As one of the verdict
7 forms?

8 **BY MR. EVANS:** Yes, sir.

9 **BY THE COURT:** Okay. I'm not going to allow that
10 as a mitigator. "E" is okay and "F" and "G". I don't see
11 any problem there.

12 **BY MR. EVANS:** Your Honor, the only problem I
13 have with "G" is there is nothing in the record that
14 indicates that any circumstances of the crime would be a
15 mitigator.

16 **BY MR. DE GRUY:** I think that is the catch all
17 language.

18 **BY THE COURT:** I think it is too.

19 **BY MR. EVANS:** I will withdraw it.

20 **BY THE COURT:** As a matter of fact, that is
21 verbatim just almost as to what the catch all is. We have
22 included that in every one we have ever done. So that stays.
23 Okay. Any others that you want that are supported by the
24 evidence?

25 **BY MR. DE GRUY:** No, Your Honor. I think that
26 covers it.

27 **BY THE COURT:** Okay. Then that is the
28 instruction that I'm going to give with those amendments to
29 it. I would ask that we take a short recess while y'all get

Consideration of Instructions - JURY OUT

1 that instruction. There are four of them. When you get
2 those four in that form, then we will to go the others. How
3 about that?

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** Okay.

6 (DURING A RECESS FOR THE COURT REPORTER TO TYPE THE
7 NOW AMENDED SENTENCING INSTRUCTION 1, THE JURY WAS SENT TO
8 LUNCH. WHILE THEY WERE GONE, PROCEEDINGS CONTINUED IN OPEN
9 COURT WITH ALL COUNSEL AND THE DEFENDANT PRESENT BUT WITH THE
10 JURY STILL OUT:)

11 **BY MR. EVANS:** Before we go forward, there is
12 something I wanted to put on the instructions to make it
13 clear.

14 **BY THE COURT:** Okay.

15 **BY MR. EVANS:** As far as previous instructions
16 that have been given, the State in the instructions that I
17 have got that we had prepared for the first two trials; in
18 one of them we had prepared during the course of a robbery
19 for pecuniary gain, great risk of death to many people, and
20 to avoid apprehension. We had those three. In the other
21 one, great risk of death to many people and the robbery for
22 pecuniary gain. But to make sure that I was representing
23 things right for the Court, we called Judy Martin with the
24 AG's Office and asked her to look and make sure what was
25 actually submitted to the jury in both cases. And what was
26 submitted in both cases was robbery for pecuniary gain and
27 great risk of death to many people. All three of them had
28 been prepared, but that is the two that were submitted.

29 In this case I don't wish to use the one great risk

Consideration of Instructions - JURY OUT

1 of death to many people. The two that I would ask to use are
2 the robbery for pecuniary gain and to avoid arrest and
3 apprehension.

4 And I think, if I'm not mistaken, all of this in
5 previous discovery, all three of them had been furnished in
6 previous discovery. Plus they were prepared in the original
7 instructions, but they were not submitted to the jury like
8 that. I just wanted to make sure that I don't misrepresent
9 anything to the Court on that.

10 **BY MR. DE GRUY:** We maintain our objection to
11 them.

12 **BY MR. CARTER:** And I probably did the most
13 intensive reading of the file, and the only two that I'm
14 aware of are the two that we discussed when we were in the
15 motion hearing that day.

16 **BY MR. EVANS:** And I would have to go back and
17 look. It might take five minutes; it may take a long time,
18 but I'm if I'm not mistaken, these were all three furnished
19 in discovery.

20 **BY THE COURT:** Okay. I need to see -- there was
21 a motion for you to divulge which ones that you were going to
22 rely on. I know that there was some discussions about what
23 went on at the other trial. I do not know what you replied,
24 what your reply to that motion was or what your discovery
25 showed in that regard. If, in fact, you put something in
26 written discovery where you said that that would be one of
27 the factors that you might consider, that might change the
28 situation. If that is not there though, I think they are
29 entitled to rely on the communications we had at that

Consideration of Instructions - JURY OUT

1 hearing.

2 I agree with you that the facts can develop
3 different things, but in preparation for trial, once they
4 file that motion, they ought to be entitled to at least know
5 that you might do something else. So I need to see what you
6 did in relation to that discovery.

7 **BY MR. EVANS:** Yes, sir. And if I can't find it
8 real quick, then we will just go on. I'm not going to waste
9 the Court's time.

10 **BY THE COURT:** Okay, all right. And if he cannot
11 produce that and we have to strike it, is it okay, folks, if
12 we just strike that out, black it out rather than having to
13 go through typing all this again?

14 **BY MR. DE GRUY:** Yes, Your Honor.

15 **BY THE COURT:** Okay, all right. Y'all, somebody
16 sitting there in that back, I do not have the jury here, and
17 I'm discussing these things. Do not let them come in the
18 courtroom until you have told me that they are here. Okay?

19 (Off the record briefly. Mr. Evans reenters and
20 hands something to the Court.)

21 **BY THE COURT:** Okay, these are notices that were
22 provided prior to the first trial? Is that correct?

23 **BY MR. EVANS:** Yes, sir.

24 **BY THE COURT:** Were these same things provided to
25 these gentlemen for this trial?

26 **BY MR. EVANS:** No, sir, because the Court ordered
27 that it wasn't necessary. The Court overruled their motion
28 that we have to provide aggravators.

29 **BY MS. FERRARO:** Your Honor, I was at that

Consideration of Instructions - JURY OUT

1 hearing making notes, and I remember we filed a motion asking
2 about that specific aggravator of the avoiding arrest
3 aggravator, and Mr. Evans said he was only going to use the
4 two aggravators that he used previously. And you said that
5 was your ruling, is that he was going to use the ones he had
6 already used. And that's my recollection of the hearing, and
7 I was only making notes in the argument. I don't know if
8 that is true. You might want to check the transcript.

9 **BY THE COURT:** And nobody drew a written order
10 for me to sign, did they?

11 **BY MR. CARTER:** No, sir.

12 **BY THE COURT:** I'm going to stand by my original
13 ruling, and I'm going to delete it from these instructions.
14 (Pause) Okay, now I don't know that everybody has looked at
15 all these since we have done all the typing and whatever. So
16 I will give them back to y'all if y'all want to--

17 **BY MR. EVANS:** You have seen them, didn't you,
18 Clyde?

19 **BY THE COURT:** Y'all have seen them, I guess,
20 because you were in there when Linda was typing them.

21 **BY MR. EVANS:** Yes, sir.

22 **BY MR. DE GRUY:** We haven't seen them.

23 **BY THE COURT:** The deletion is I deleted number 2
24 as far as an aggravator.

25 **BY THE COURT REPORTER:** I put copies on both of
26 their tables.

27 **BY MR. DE GRUY:** Yeah, we have copies.

28 **BY THE COURT:** Okay, all right. Then, Mr. de
29 Gruy, have you stated all of your objections to SS-1A, SS-1B,

Consideration of Instructions - JURY OUT

SS-1C, and SS-1D?

BY MR. DE GRUY: The only change we would request, without waiving the instruction we have previously submitted, is that in the first -- the second sentence, "You must now decide whether the Defendant will be sentenced to death or life imprisonment," we would ask that "without parole" be inserted there.

BY THE COURT: Well, the form of their verdict is in this instruction, and if they return life imprisonment, the only form that they can return is that form of the verdict, and it says "life without parole." So I think that sufficiently covers it. If they return a verdict other than that, I'm going to send them back to return that verdict because they have only got two that they can return. I'm going to give those four instructions.

COURT INSTRUCTIONS C-2, C-3, C-4: **BY THE COURT:** Okay, I don't think you have seen these. These are stock sentencing instructions.

BY MR. DE GRUY: Would be 2, 3 and 4?

BY THE COURT: Yeah, 2, 3 and 4. One is adopting the testimony. Okay, you have got them?

BY MR. DE GRUY: Yes.

BY THE COURT: Then it's the foreman and then the mere counting instruction. Any objection to those?

BY MR. DE GRUY: On C-3, the foreman instruction, our only request would be a final sentence that basically tells them the same thing. Upon this form that has been approved by the Supreme Court, whatever verdict is returned should be signed by the foreman, and therefore, there should

Consideration of Instructions - JURY OUT

1 be a sentence, In the event you unanimously find that the
2 Defendant should be sentenced to life without parole, the
3 foreman shall, and language there. If you look at the SS-1
4 instructions.

5 **BY THE COURT:** Yeah, I know. Right. How about
6 instead of "the," "any"?

7 **BY MR. DE GRUY:** That's all right.

8 **BY THE COURT:** That would work? The last two
9 words. "And the foreman shall thereafter affix his or her
10 signature to any verdict."

11 **BY MR. DE GRUY:** I think that the sentence is
12 referring only to the death verdict. It specifically says
13 that.

14 **BY THE COURT:** (Pause) There again, that
15 instruction gives them the three things that they can find,
16 and it has a line for them to sign. And certainly, there are
17 significant things they have to find in relation to the death
18 penalty. In relation to the other verdicts, all they have to
19 do is sign it, and I'm not going to confuse them with all
20 that. I think if you read the instructions as a whole, it
21 clearly advises what to do. I don't have any problem to
22 changing "the" to "any."

23 **BY MR. DE GRUY:** We will accept that without
24 waiving our request for the full sentence.

25 **BY THE COURT:** Okay. How would it be prejudiced
26 by not doing the other way?

27 **BY MR. DE GRUY:** That was the whole point that
28 the Supreme Court discussed in the old form of the verdict
29 that only had one signature line, that the jury may not

Consideration of Instructions - JURY OUT

1 consider any other option. It would lead the jury or may
2 lead a jury in following the instructions mechanically to
3 only return a death verdict. And that was the rational in
4 the Court in which they said in the future, provide signature
5 lines for all.

6 **BY THE COURT:** Okay, well, what about if we
7 change it this way then. If you unanimously reach a verdict
8 on sentencing, the foreman shall cause the verdict to be
9 written in the form and manner prescribed in Schedule 1, and
10 the foreman shall thereafter affix his or her signature to
11 the verdict?

12 **BY MR. DE GRUY:** I have no objection to that.

13 **BY THE COURT:** How about that, Mr. Evans?

14 **BY MR. EVANS:** No objection.

15 **BY THE COURT:** All right, let's see if I can
16 remember what I just said. (Pause while the Court writes.)
17 Let me read it back to you again. "If you unanimously reach
18 a verdict as to sentence, the foreman shall cause the verdict
19 to be written in the form and manner prescribed in Sentencing
20 Instruction 1, and the foreman shall thereafter affix his or
21 her signature to the verdict"?

22 **BY MR. DE GRUY:** We have no objection to that.

23 **BY MR. EVANS:** It is fine.

24 **BY THE COURT:** Okay. All right, Sentencing
25 Instruction 2 is given. 3 is going to be given as amended.
26 4 is given. And that is, for the record, that is C-2, C-3
27 and C-4.

28 **BY MR. DE GRUY:** Your Honor, I understand the
29 ruling on the first, on the long instruction that we were

Consideration of Instructions - JURY OUT

1 talking about, but just so the record is clear. We would
2 also ask that "without parole" be inserted after "life
3 imprisonment" in this instruction. I understand that you
4 have ruled on that, but I--

5 **BY THE COURT:** -- Okay, my ruling is that it is
6 included in there and that they are adequately instructed as
7 to what their verdict must be and adequately instructed as to
8 what the penalties are. Was that all-- I have got too many
9 papers up here. What else did y'all have? Or was that it?

10 **BY MR. EVANS:** I think that was it.

11 **BY THE COURT:** Okay. I will go over the verdict
12 form in a minute.

13 INSTRUCTION NO. DS-1A, DS-1B, DS-1C and DS-1D:

14 **BY THE COURT:** Okay, Defendant's S-1A is refused as repetitive
15 of the Court's sentencing instruction, as is Defendant's
16 S-1B, C and D.

17 INSTRUCTION NO. DS-2: **BY THE COURT:** What do y'all
18 say to DS-2?

19 **BY MR. EVANS:** Your Honor, the only problem, I
20 don't like the part in here and I don't think it's
21 appropriate where it says, "I cannot stress to you enough
22 that the focus of your deliberations during this phase is not
23 the same as an ordinary case." I don't think that would be
24 appropriate.

25 **BY THE COURT:** Mr. de Gruy. Do you have any
26 argument?

27 **BY MR. DE GRUY:** No, sir.

28 **BY THE COURT:** Okay, my job is to instruct them
29 on the law. My job is not to make commentary on the death

Consideration of Instructions - JURY OUT

1 penalty, and that's what this instruction does. And the rest
2 of the instruction is covered by Sentencing Instruction
3 number 1. Therefore, it's refused.

4 INSTRUCTION NO. DS-3: BY MR. EVANS: DS-3, I would
5 object to because it's the Court bringing race into this
6 case, and race has no bearing in the court system.

7 **BY THE COURT:** There is some specific case law
8 about that is not to be injected into the case. I have
9 instructed them at the initial phase of this trial about bias
10 or prejudice, and I'm going to refuse that instruction.

11 INSTRUCTION NO. DS-4: BY MR. EVANS: Object to D-4
12 as being an improper comment. There is a presumption of
13 innocence. There is no presumption that there are no
14 aggravating circumstances because once we have proven the
15 fact that it was a capital murder, there automatically is an
16 aggravating circumstance, so there is no presumption. The
17 only thing that is important here is what the burden is on
18 the jury, and that is covered by the instructions.

19 **BY THE COURT:** Any response?

20 **BY MR. DE GRUY:** Well, we think the aggravators
21 do have to be found again beyond a reasonable doubt by this
22 jury.

23 **BY THE COURT:** But isn't that in Sentencing
24 Instruction number 1 --

25 **BY MR. EVANS:** --Yes, sir--

26 **BY THE COURT:** --as to exactly what they must do
27 and the burden of proof that they must have?

28 **BY MR. EVANS:** Yes, sir.

29 **BY THE COURT:** Okay. I think the Sentencing

Consideration of Instructions - JURY OUT

1 Instruction number 1 -- well, the first four state the law
2 and tells the jury what they must do and what their
3 obligations are and what the law is. And that is refused as
4 being repetitive.

5 INSTRUCTION NO. DS-5: BY MR. EVANS: DS-5 now
6 should just have one aggravating circumstance instead of two.

7 BY MR. DE GRUY: I agree with that.

8 (Pause while the Court marks on the instruction.)

9 BY THE COURT: Any objection to the thing, the
10 amendment to that instruction? D-5, DS-5?

11 BY MR. EVANS: No, sir. I don't think I have any
12 objection to the rest of it. Of course, that is not the only
13 thing they are to consider because all of the evidence from
14 the first phase has been introduced. I think because of
15 that, since it's already, I think that has already been given
16 in the Court's instruction. I think it might be misleading
17 but.

18 BY THE COURT: I'm going to give it, but it needs
19 to be given in this form. "I have previously read to you the
20 one aggravating circumstance which the law permits you to
21 consider. This is the only aggravating circumstance you may
22 consider. However, before you may consider this factor, you
23 must find that factor is established by the evidence beyond a
24 reasonable doubt."

25 BY MR. EVANS: Now I think that is a correct
26 statement of the law.

27 BY THE COURT: Okay, and you have no objection to
28 those amendments, I am sure?

29 BY MR. DE GRUY: No, Your Honor.

Consideration of Instructions - JURY OUT

1 **BY THE COURT:** I'm going to give this one; I'm
2 going to give DS-5 as amended. We are going to have to
3 redraw it.

4 INSTRUCTION NO. DS-6: **BY THE COURT:** In light of
5 giving--

6 **BY MR. DE GRUY:** --Yeah, we will withdraw 6.

7 **BY THE COURT:** Okay.

8 INSTRUCTION NO. DS-7: **BY MR. EVANS:** I think that
9 all of how the procedure is already more properly covered in
10 the other sentencing instructions. And it's trying to
11 explain "reasonable doubt"--

12 **BY THE COURT:** I think DS-7 is repetitive. That
13 is refused. Also, I agree it does try to define "reasonable
14 doubt."

15 INSTRUCTION NO. DS-8: **BY MR. EVANS:** Your Honor, I
16 think this is misleading and improper. The Court -- I have
17 an instruction here that if they are requesting an
18 instruction on mitigating circumstances, has been approved
19 and given by this Court many times, and I would offer it.

20 (Hands to Defense Counsel.)

21 INSTRUCTION NO. DS-10 AND C-5: **BY MR. DE GRUY:**
22 That is essentially our DS-10. We have the word "individual"
23 underlined to stress that it is their individual decision
24 that the law requires.

25 (Mr. Hill hands a document to the Court.)

26 **BY MR. EVANS:** I think Blue v. State, 674--

27 **BY THE COURT:** -- As far as the underlining? I
28 don't allow any underlining.

29 **BY MR. DE GRUY:** Sir?

Consideration of Instructions - JURY OUT

1 **BY MR. EVANS:** No, I'm just talking about this
2 instruction. Blue v. State, 674 So.2d 1184, I think that is
3 the instruction that they said was appropriate if the defense
4 requests it.

5 **BY MR. DE GRUY:** And I think that is our DS-10
6 unless I missed a word somewhere.

7 **BY THE COURT:** Okay. Then except you have got
8 "individual" underlined, and I think that is inappropriate to
9 emphasize any part of the instruction. I'm going to give
10 this one that the State has submitted in lieu of DS-10
11 because there is no underlining of "individual" on there.
12 And let's see what I'm going to number it. For the sake of
13 the record, I will number that C-5. In light of that, I'm
14 going to refuse DS-8 and DS-10.

15 INSTRUCTION NO. DS-9: **BY MR. EVANS:** I think what
16 is in 9 is better covered by that other instruction also.

17 **BY THE COURT:** I think it's superfluous. I'm
18 going to refuse it. That is DS-9.

19 INSTRUCTION NO. DS-11: **BY THE COURT:** And I think
20 we have already covered mitigation. I have given a
21 mitigation instruction. DS-11 is refused, also on the basis
22 that "individual" is once again underlined.

23 INSTRUCTION NO. DS-12: **BY THE COURT:** DS-12 is
24 covered by the sentencing instructions given at the outset.
25 So therefore it's refused.

26 INSTRUCTION NO. DS-13: **BY THE COURT:** DS-14 [sic]
27 is a statement of the mitigating circumstances. It's a
28 restatement of them. They are contained in the first
29 sentencing instruction. Also, the ones contained in DS-13

Consideration of Instructions - JURY OUT

are not consistent with the ones that I granted, so it's refused.

INSTRUCTION NO. DS-14: **BY THE COURT:** Okay, what do you say to DS-14?

BY MR. EVANS: I would object to 14. I don't think it's a proper instruction for the Court to give. It would be the Court trying to predict what the legislature may do in the future.

BY THE COURT: Or tomorrow. I think it is covered in the Court's instructions. Life in prison without parole says what it says. It's refused.

INSTRUCTION NO. DS-15: **BY MR. EVANS:** I think 15 is, if I'm not mistaken, it's already covered in the Court's instructions.

BY THE COURT: It was covered in the original S-1 at the guilt phase. I don't know that there is any particular language in this sentencing instruction about that. It's a typical instruction that the Court gives at the first, as C-1. I'm going to give it. That is DS-15.

INSTRUCTION NO. DS-16: **BY THE COURT:** Okay, DS-16 is covered in the original sentencing instruction, of the State Sentencing Instruction 1A, B, C and D. Therefore, it's repetitious and it's refused.

INSTRUCTION NO. DS-17: **BY MR. EVANS:** The State would object to 17.

BY THE COURT: Right. They are advised of that in the sentencing instruction, the original sentencing instruction, State's Sentence Instruction 1A, B, C and D. And this is an unnecessary comment on what is in that

Consideration of Instructions - JURY OUT

instruction, so therefore it's refused. Okay.

BY MR. DE GRUY: Your Honor, just for the record, I don't believe that it tells the jury what happens if they don't agree in the sentencing instructions that have been granted. And this jury has never been told what would happen, and they should be.

BY THE COURT: Well, I don't know that that is the law. That sentencing instruction we are giving them is the sentencing instruction that has been approved by the Court. That is the one we are going to give, and I'm going to refuse this one. Okay, I have got two--

BY MR. EVANS: -- Also, Your Honor, just for the record, to put in the record; another objection is that it indicates to the jury that they have to do this in a certain time period, and I don't think that would be proper.

BY THE COURT: It gives them directions, inappropriate directions as to how they are to perform their duty. Okay. I have got to have two of these fixed.

(WHEREUPON, THE COURT REPORTER LEFT THE COURTROOM TO RETYPE TWO INSTRUCTIONS. THE COURT AND THE ATTORNEYS CONFERRED CONCERNING SENTENCING INSTRUCTION SS-1A, 1B, 1C, AND 1D WHILE THE COURT REPORTER WAS OUT OF THE COURTROOM BUT MADE THE FOLLOWING RECORD UPON HER RETURN WITH THE JURY STILL OUT:)

BY THE COURT: Let the record reflect that State Sentence Instructions 1A, B, C, and D have been amended. They have been amended in the following manner. On page 2 of each of those instructions, starting with the first new paragraph on that page, it will read as follows: "Consider

Consideration of Instructions - JURY OUT

1 only the following element of aggravation in determining
2 whether the death penalty should be imposed: The capital
3 offense was committed for pecuniary gain during the course of
4 a robbery. You must unanimously find, beyond a reasonable
5 doubt, that the preceding aggravating circumstance exists in
6 this case to return the death penalty. If this aggravating
7 circumstance is found not to exist, the death penalty may not
8 be imposed, and you shall write the following verdict on a
9 sheet of paper. 'We, the jury, find that the defendant
10 should be sentenced to life imprisonment without parole.'
11 If the above aggravating circumstance is found to exist
12 beyond a reasonable doubt, then you must consider whether
13 there are mitigating circumstances which outweigh the
14 aggravating circumstance."

15 That amendment was made on each of these
16 instructions. Is that right, gentlemen?

17 **BY MR. DE GRUY:** That's correct.

18 **BY MR. HILL:** That's correct, Your Honor.

19 **BY THE COURT:** You are satisfied with that form?

20 **BY MR. DE GRUY:** Yes, Your Honor.

21 **BY THE COURT:** Okay. Then each of those
22 instructions has been given by the Court. Instruction C-2 is
23 given as Instruction Number 2. C-3 is given as Instruction
24 number 3. C-4 is given as Instruction number 4. DS-5 is
25 given as Instruction number 5. C-5 is given as Instruction
26 number 6. And DS-15 is given as Instruction number 7. And
27 also, then will be attached to these instructions a verdict
28 form consistent with the form set forth in State Sentence
29 Instruction 1A, B, C, and D. And I understand there is no

Court Reads Instructions to Jury

1 objection to that verdict form? Is that correct?

2 **BY MR. DE GRUY:** No objection.

3 **BY THE COURT:** Okay. All right, we can file
4 these, and we can proceed.

5 JURY ENTERS THE COURTROOM.

6 **BY THE COURT:** Ladies and gentlemen, once again,
7 I must give you some instructions that apply to this phase of
8 the trial. There again, they are in writing, and you will be
9 able to take them to the jury room with you.

10 "You have found the defendant guilty of the crime
11 of capital murder of Bertha Tardy. You must now decide
12 whether the defendant will be sentenced to death or life
13 imprisonment. In reaching your decision, you may objectively
14 consider the detailed circumstances of the offense for which
15 the defendant was convicted, and the character and record of
16 the defendant himself. You should consider and weigh any
17 aggravating and mitigating circumstances, as set forth later
18 in this instruction, but you are cautioned not to be swayed
19 by mere sentiment, conjecture, sympathy, passion, prejudice,
20 public opinion, or public feeling.

21 To return the death penalty in this case, you must
22 first unanimously find from the evidence beyond a reasonable
23 doubt that one or more of the following facts existed: That
24 the defendant actually killed Bertha Tardy; That the
25 defendant attempted to kill Bertha Tardy; That the defendant
26 intended the killing of Bertha Tardy take place or; That the
27 defendant contemplated that lethal force would be employed.

28 Next to return the death penalty, you must find the
29 mitigating circumstances, those which tend to warrant the

Court Reads Instructions to Jury

1 considered mitigating circumstances; Any other circumstance
2 or combination of circumstances of the crime or of the life
3 and character of Mr. Flowers which you believe should
4 mitigate in favor of a sentence of life imprisonment.

5 If you find from the evidence that one or more of
6 the preceding elements of mitigation exists, then you must
7 consider whether it outweighs or overcomes any aggravating
8 circumstances you previously found. In the event that you
9 find that the mitigating circumstances do not outweigh or
10 overcome the aggravating circumstance, you may impose the
11 death sentence. Should you find that the mitigating
12 circumstances outweigh or overcome the aggravating
13 circumstance, you shall not impose the death sentence.

14 The verdict you return must be written on a
15 separate sheet of paper signed by the foreman. Your verdict
16 should be written in one of the following forms:

17 We, the jury, unanimously find from the evidence
18 beyond a reasonable doubt that the following facts existed at
19 the time of the commission of the capital murder of Bertha
20 Tardy.

21 Here you list or itemize all facts found, if any, from the
22 list under Section A of this instruction which you
23 unanimously agree exists in this case beyond a reasonable
24 doubt.

25 Next we, the jury unanimously find that the
26 aggravating circumstance of:" And then you "List or itemize
27 all of the aggravating circumstances presented in Section B
28 of this instruction which you unanimously agree exist in this
29 case as to Bertha Tardy beyond a reasonable doubt.

Court Reads Instructions to Jury

1 Exist beyond a reasonable doubt and is sufficient to impose
2 the death penalty and that there are insufficient mitigating
3 circumstances to outweigh the aggravating circumstance, and
4 we further find unanimously that the defendant should suffer
5 death."

6 It's a line for the foreman of the jury to sign.

7 Or "We, the jury, find that the defendant should be
8 sentenced to life imprisonment without parole." There again
9 there is a line for the foreman of the jury to sign.

10 Or "We, the jury, are unable to agree unanimously
11 on punishment." And there again there is a line for the
12 foreman to sign.

13 "You have found the defendant guilty of the crime
14 of capital murder of Robert Golden. You must now decide
15 whether the defendant will be sentenced to death or life
16 imprisonment. In reaching your decision, you may objectively
17 consider the detailed circumstances of the offense for which
18 the defendant was convicted, and the character and record of
19 the defendant himself. You should consider and weigh any
20 aggravating and mitigating circumstances, as set forth in
21 this instruction, but you are cautioned not to be swayed by
22 mere sentiment, conjecture, sympathy, passion, prejudice,
23 public opinion, or public feeling.

24 To return the death penalty in this case, you must
25 first unanimously find from the evidence beyond a reasonable
26 doubt that one or more of the following facts existed: That
27 the defendant actually killed Robert Golden; That the
28 defendant attempted to kill Robert Golden; That the defendant
29 intended the killing of Robert Golden take place or; That the

Court Reads Instructions to Jury

defendant contemplated that lethal force would be employed.

Next to return the death penalty, you must find the mitigating circumstances, those which tend to warrant the less severe penalty of life imprisonment without parole, do not outweigh the aggravating circumstance which tend to warrant the death penalty.

Consider only the following element of aggravation in determining whether the death penalty should be imposed: The capital offense was committed for pecuniary gain during the course of a robbery.

You must unanimously find, beyond a reasonable doubt, that the preceding aggravating circumstance exists in this case to return the death penalty. If this aggravating circumstance is found not to exist, the death penalty may not be imposed, and you shall write the following verdict on a sheet of paper.

'We, the jury, find that the defendant should be sentenced to life imprisonment without parole.'

If the above aggravating circumstance is found to exist beyond a reasonable doubt, then you must consider whether there are mitigating circumstances which outweigh the aggravating circumstance. Consider the following elements of mitigation in determining whether the death penalty should not be imposed:

Curtis Flowers has no history of prior criminal activity; Mr. Flowers has a good prison record with no rules violations; Mr. Flowers follows the rules and regulations of the prison, does as he is told, and does not cause trouble for guards; Mr. Flowers has a loving, supporting family and

Court Reads Instructions to Jury

1 many friends; Any and all factors relative to the background,
2 life, environment, and emotional makeup of Curtis Flowers,
3 which would be mitigating circumstances or could be
4 considered mitigating circumstances; Any other circumstance
5 or combination of circumstances of the crime or of the life
6 and character of Mr. Flowers which you believe should
7 mitigate in favor of a sentence of life imprisonment.

8 If you find from the evidence that one or more of
9 the preceding elements of mitigation exists, then you must
10 consider whether it or they outweigh or overcome any
11 aggravating circumstance you previously found. In the event
12 that you find that the mitigating circumstances do not
13 outweigh or overcome the aggravating circumstance, you may
14 impose the death sentence. Should you find that the
15 mitigating circumstances outweigh or overcome the aggravating
16 circumstance, you shall not impose the death sentence.

17 The verdict you return must be written on a
18 separate sheet of paper signed by the foreman. Your verdict
19 should be written in one of the following forms:

20 We, the jury, unanimously find from the evidence
21 beyond a reasonable doubt that the following facts existed at
22 the time of the commission of the capital murder of Robert
23 Golden.

24 List or itemize all facts found, if any, from the list under
25 Section A of this instruction which you unanimously agree
26 exists in this case beyond a reasonable doubt.

27 Next we, the jury unanimously find that the
28 aggravating circumstance of:" And you "List or itemize all
29 of the aggravating circumstances presented in Section B of

Court Reads Instructions to Jury

1 this instruction which you unanimously agree exist in this
2 case as to Robert Golden beyond a reasonable doubt.
3 Exist beyond a reasonable doubt and is sufficient to impose
4 the death penalty and that there are insufficient mitigating
5 circumstances to outweigh the aggravating circumstance, and
6 we further find unanimously that the defendant should suffer
7 death."

8 The foreman should sign that verdict.

9 Or "We, the jury, find that the defendant should be
10 sentenced to life imprisonment without parole." The foreman
11 should sign that verdict.

12 Or "We, the jury, are unable to agree unanimously
13 on punishment." The foreman shall sign that verdict.

14 "You have found the defendant guilty of the crime
15 of capital murder of Carmen Rigby. You must now decide
16 whether the defendant will be sentenced to death or life
17 imprisonment. In reaching your decision, you may objectively
18 consider the detailed circumstances of the offense for which
19 the defendant was convicted, and the character and the record
20 of the defendant himself. You should consider and weigh any
21 aggravating and mitigating circumstances, as set forth later
22 in this instruction, but you are cautioned not to be swayed
23 by mere sentiment, conjecture, sympathy, passion, prejudice,
24 public opinion, or public feeling.

25 To return the death penalty in this case, you must
26 first unanimously find from the evidence beyond a reasonable
27 doubt that one or more of the following facts existed: That
28 the defendant actually killed Carmen Rigby; That the
29 defendant attempted to kill Carmen Rigby; That the defendant

Court Reads Instructions to Jury

1 intended the killing of Carmen Rigby take place or; That the
2 defendant contemplated that lethal force would be employed.

3 Next to return the death penalty, you must find the
4 mitigating circumstances, those which tend to warrant the
5 less severe penalty of life imprisonment without parole, do
6 not outweigh the aggravating circumstances which tend to
7 warrant the death penalty.

8 Consider only the following element of aggravation
9 in determining whether the death penalty should be imposed:
10 The capital offense was committed for pecuniary gain during
11 the course of a robbery.

12 You must unanimously find, beyond a reasonable
13 doubt, that the preceding aggravating circumstance exists in
14 this case to return the death penalty. If this aggravating
15 circumstance is found not to exist, the death penalty may not
16 be imposed, and you shall write the following verdict on a
17 sheet of paper.

18 'We, the jury, find that the defendant should be
19 sentenced to life imprisonment without parole.'

20 If the above aggravating circumstance is found to
21 exist beyond a reasonable doubt, then you must consider
22 whether there are mitigating circumstances which outweigh the
23 aggravating circumstance. Consider the following elements of
24 mitigation in determining whether the death penalty should
25 not be imposed:

26 Curtis Flowers has no history of prior criminal
27 activity; Mr. Flowers has a good prison record with no rules
28 violations; Mr. Flowers follows the rules and regulations of
29 the prison, does as he is told, and does not cause trouble

Court Reads Instructions to Jury

1 for guards; Mr. Flowers has a loving, supporting family and
2 many friends; Any and all factors relative to the background,
3 life, environment, and emotional makeup of Curtis Flowers,
4 which would be mitigating circumstances or could be
5 considered mitigating circumstances; Any other circumstance
6 or combination of circumstances of the crime or of the life
7 and character of Mr. Flowers which you believe should
8 mitigate in favor of a sentence of life imprisonment.

9 If you find from the evidence that one or more of
10 the preceding elements of mitigation exists, then you must
11 consider whether it or they outweigh or overcome any
12 aggravating circumstance you previously found. In the event
13 that you find that the mitigating circumstances do not
14 outweigh or overcome the aggravating circumstance, you may
15 impose the death sentence. Should you find that the
16 mitigating circumstances outweigh or overcome the aggravating
17 circumstance, you shall not impose the death sentence.

18 The verdict you return must be written on a
19 separate sheet of paper signed by the foreman. Your verdict
20 should be written in one of the following forms:

21 We, the jury, unanimously find from the evidence
22 beyond a reasonable doubt that the following facts existed at
23 the time of the commission of the capital murder of Carmen
24 Rigby.

25 List or itemize all facts found, if any, from the list under
26 Section A of this instruction which you unanimously agree
27 exists in this case beyond a reasonable doubt.

28 Next we, the jury unanimously find that the
29 aggravating circumstance of: List or itemize all of the

Court Reads Instructions to Jury

1 aggravating circumstances presented in Section B of this
2 instruction which you unanimously agree exist in this case as
3 to Carmen Rigby beyond a reasonable doubt.

4 Exist beyond a reasonable doubt and is sufficient to impose
5 the death penalty and that there are insufficient mitigating
6 circumstances to outweigh the aggravating circumstance, and
7 we further find unanimously that the defendant should suffer
8 death.

9 Or 'We, the jury, find that the defendant should be
10 sentenced to life imprisonment without parole.'" As to that
11 first sentence, of course, the foreman signs it, and the
12 foreman signs the one I just read.

13 Or "We, the jury, are unable to agree unanimously
14 on punishment." And the foreman signs that one.

15 "You have found the defendant guilty of the crime
16 of capital murder of Derrick Stewart. You must now decide
17 whether the defendant will be sentenced to death or life
18 imprisonment. In reaching your decision, you may objectively
19 consider the detailed circumstances of the offense for which
20 the defendant was convicted, and the character and record of
21 the defendant himself. You should consider and weigh any
22 aggravating and mitigating circumstances, as set forth later
23 in this instruction, but you are cautioned not to be swayed
24 by mere sentiment, conjecture, sympathy, passion, prejudice,
25 public opinion, or public feeling.

26 To return the death penalty in this case, you must
27 first unanimously find from the evidence beyond a reasonable
28 doubt that one or more of the following facts existed: That
29 the defendant actually killed Derrick Stewart; That the

Court Reads Instructions to Jury

1 defendant attempted to kill Derrick Stewart; That the
2 defendant intended the killing of Derrick Stewart take place
3 or; That the defendant contemplated that lethal force would
4 be employed.

5 Next to return the death penalty, you must find the
6 mitigating circumstances, those which tend to warrant the
7 less severe penalty of life imprisonment without parole, do
8 not outweigh the aggravating circumstances which tend to
9 warrant the death penalty.

10 Consider only the following element of aggravation
11 in determining whether the death penalty should be imposed:
12 The capital offense was committed for pecuniary gain during
13 the course of a robbery.

14 You must unanimously find, beyond a reasonable
15 doubt, that the preceding aggravating circumstance exists in
16 this case to return the death penalty. If this aggravating
17 circumstance is found not to exist, the death penalty may not
18 be imposed, and you shall write the following verdict on a
19 sheet of paper.

20 'We, the jury, find that the defendant should be
21 sentenced to life imprisonment without parole.'

22 If the above aggravating circumstance is found to
23 exist beyond a reasonable doubt, then you must consider
24 whether there are mitigating circumstances which outweigh the
25 aggravating circumstance. Consider the following elements of
26 mitigation in determining whether the death penalty should
27 not be imposed:

28 Curtis Flowers has no history of prior criminal
29 activity; Mr. Flowers has a good prison record with no rules

Court Reads Instructions to Jury

1 violations; Mr. Flowers follows the rules and regulations of
2 the prison, does as he is told, and does not cause trouble
3 for guards; Mr. Flowers has a loving, supporting family and
4 many friends; Any and all factors relative to the background,
5 life, environment, and emotional makeup of Curtis Flowers,
6 which would be mitigating circumstances or could be
7 considered mitigating circumstances; Any other circumstance
8 or combination of circumstances of the crime or of the life
9 and character of Mr. Flowers which you believe should
10 mitigate in favor of a sentence of life imprisonment.

11 If you find from the evidence that one or more of
12 the preceding elements of mitigation exists, then you must
13 consider whether it or they outweigh or overcome any
14 aggravating circumstance you previously found. In the event
15 that you find that the mitigating circumstances do not
16 outweigh or overcome the aggravating circumstance, you may
17 impose the death sentence. Should you find that the
18 mitigating circumstances outweigh or overcome the aggravating
19 circumstance, you shall not impose the death sentence.

20 The verdict you return must be written on a
21 separate sheet of paper and signed by the foreman. Your
22 verdict should be written in one of the following forms:

23 We, the jury, unanimously find from the evidence
24 beyond a reasonable doubt that the following facts existed at
25 the time of the commission of the capital murder of Derrick
26 Stewart.

27 List or itemize all facts found, if any, from the list under
28 Section A of this instruction which you unanimously agree
29 exists in this case beyond a reasonable doubt.

Court Reads Instructions to Jury

1 Next we, the jury unanimously find that the
2 aggravating circumstance of:" And you "List or itemize all
3 of the aggravating circumstances presented in Section B of
4 this instruction which you unanimously agree exist in this
5 case as to Derrick Stewart beyond a reasonable doubt.
6 Exist beyond a reasonable doubt and is sufficient to impose
7 the death penalty and that there are insufficient mitigating
8 circumstances to outweigh the aggravating circumstance, and
9 we further find unanimously that the defendant should suffer
10 death."

11 That verdict to be signed by the foreman.

12 Or "We, the jury, find that the defendant should be
13 sentenced to life imprisonment." That should be signed by
14 the foreman.

15 Or "We, the jury, are unable to agree unanimously
16 on punishment." And that should be signed by the foreman.

17 "The Court instructs the jury that at this phase of
18 the trial conducted for the purpose of determining the
19 sentence to be imposed upon the defendant, the state and the
20 defendant may elect to stand on the testimony and evidence
21 introduced during the first or guilt phase of this trial, or
22 the parties may elect to introduce additional testimony and
23 evidence as to matters relating to any of the aggravating or
24 mitigating circumstances. In reaching your verdict, you may
25 consider the testimony and evidence presented during the
26 first phase of the trial together with the testimony and
27 evidence, if any, relating to any one of the aggravating or
28 mitigating circumstances presented for your consideration
29 during the second or sentencing phase of the trial."

Court Reads Instructions to Jury

1 "The Court instructs the jury that for this phase
2 of the trial, you shall select from among yourselves a
3 foreman. If you unanimously reach a verdict as to sentence,
4 the foreman shall cause the verdict to be written in the form
5 and manner prescribed in Sentencing Instruction I, and the
6 foreman shall thereafter affix his or her signature to the
7 verdict."

8 "The Court instructs the jury that it must be
9 emphasized that the procedure that you must follow is not a
10 mere counting process of a certain number of aggravating
11 circumstances versus the number of mitigating circumstances.
12 Rather, you must apply your reasoned judgment as to whether
13 this situation calls for life imprisonment or whether it
14 requires the imposition of death, in light of the totality of
15 the circumstances present.

16 I have previously read to you the one aggravating
17 circumstance which the law permits you to consider. This is
18 the only aggravating circumstance you may consider. However,
19 before you may consider this factor, you must find that
20 factor is established by the evidence beyond a reasonable
21 doubt.

22 The Court instructs that you, as individual jurors,
23 must consider mitigating circumstances. Therefore, even if
24 all other eleven jurors find that a certain mitigating
25 circumstance does not exist, if you believe it does exist,
26 you must find that mitigating circumstance, and weigh it in
27 your further deliberations.

28 Before punishing Mr. Flowers with death, all twelve
29 of you must agree on such punishment. Each of you must

Sentencing Phase Argument by Mr. Evans

1 decide the sentence for yourself. In the course of your
2 deliberations, do not hesitate to re-examine your own views
3 and change your opinion if you are convinced it is wrong, but
4 do not surrender your honest conviction as to what you feel
5 the sentence in this case should be, just because of the
6 opinions of your fellow jurors, or just so that you can all
7 agree on a verdict."

8 Ladies and gentlemen, those are the instructions.

9 These are verdict forms that are as described in those
10 sentencing instructions that tells you what to do.

11 And when you reach a verdict, these forms will assist
12 you in preparing that verdict and returning it into
13 court. When you have done so, you can knock on the
14 door, and the bailiffs once again will bring you in to
15 render that verdict. All right.

16 **BY MR. EVANS:** May I see the instructions and the
17 forms, Your Honor?

18 **BY THE COURT:** Uh-hum.

19 FINAL ARGUMENT BY MR. EVANS:

20 Ladies and gentlemen, we are almost at the end of
21 the trial. This has been going on for almost two weeks now.
22 Before I go into this, and I'm not going to be very long; we
23 are going to argue about 30 minutes to the side, and then the
24 case will be yours. But there are a few things that I want
25 to point out. In this first part, I want to go over some of
26 those instructions in a little bit more detail.

27 But as y'all will remember when each of y'all were
28 sitting up here in the witness chair when we were voir diring
29 the jury, you were told at that point what the procedure in

Sentencing Phase Argument by Mr. Evans

1 the second phase would be, that we would not get to this
2 phase until such time as the jury knew that the Defendant was
3 guilty and convicted him. That has already been done. So we
4 are in the second phase.

5 This phase now is to try to determine in this
6 particular case what penalty is appropriate. And as the
7 Judge has told you, once we reintroduced all the evidence,
8 everything that y'all have heard and saw in the trial is
9 admissible. All of that is stuff that y'all can take into
10 consideration. Now I'm not going to sit here and try to go
11 back through all that case with you because y'all know what
12 the case was. You just got through with it. I'm not going
13 to sit up here and go back through pictures and diagrams and
14 shoes and things like that. I'm just going to ask that you
15 remember what was in the case.

16 There are a few things about it though that I do
17 want to point out. Now as we told you to start with, I told
18 you and the Judge told you, and I think Defense Counsel did
19 too; at this phase in the trial what we will be doing, the
20 State will be putting on evidence to justify and show you
21 that in this particular case the death penalty is the
22 appropriate penalty. The Defense will be putting on
23 mitigators, and that is exactly what the Judge has read to
24 you. In this case the aggravating factor that by law you
25 must find is that the Defendant committed this crime during
26 the course of a robbery for pecuniary gain; that he killed
27 these people during the course of the robbery, which is the
28 same thing that you have already looked at on the guilt
29 phase. That is one of the things you have to look at in this

Sentencing Phase Argument by Mr. Evans

1 case. Now also, as we told you on voir dire, it's not the
2 fact that well, he killed somebody; he gets the death
3 penalty. You sat up here and you listened to the evidence.
4 You know the facts of this particular case, and the facts of
5 this particular case are what warrants the death penalty in
6 this case. The fact that four people that had done nothing
7 to anybody were working, went to work that morning, never
8 dreaming that they would not get to see their family again,
9 never dreaming when they went to work, that that would be the
10 last time they would see any of their friends; four people
11 that for no reason their lives were taken.

12 We are not talking about a type situation where two
13 people get in a fight and somebody gets killed. We are
14 talking about a case where an individual takes a gun, goes to
15 a business because he wants some money or is mad, all tied in
16 together; he takes what he wants and he kills people. And I
17 want you to look at how they were killed. I think that is
18 important. These are basically execution type murders. All
19 four of these victims were shot in the head. He wanted to
20 make sure they were dead. This is the kind of stuff I want
21 you to look at. This is why this case demands the death
22 penalty. Four people were killed. He killed them for no
23 reason, the way he killed them, all of that is important.

24 There are several things -- and I know y'all have
25 sat here and listened to the Court's instructions, and
26 because there are four separate deaths, the Court had to read
27 the basic instructions four different times. But to me, this
28 is the most difficult instruction for a jury to understand
29 that you can have. That's why you need to take your time,

Sentencing Phase Argument by Mr. Evans

1 look over it, follow it step by step. That's why on voir
2 dire I asked you specifically if you are picked as a juror,
3 will you go through the instructions and listen to the
4 instructions that the Court gives you because these
5 instructions -- and once you elect your foreman, you can go
6 through the instructions.

7 The Sentencing Instruction SS-1A - that is the
8 first instruction on here - it starts out with the procedure
9 of what you are to do when you start your deliberations. The
10 first thing that you must do, you must unanimously find one
11 of four factors. Now those are the same four factors for
12 each case, and I'm not going to go through them for all four
13 cases, but I'm going to go through them. Those factors are
14 on the first page of the instruction. It's four of them
15 right there. The first one, and this is in the instructions
16 relative to Bertha Tardy, that the Defendant actually killed
17 Bertha Tardy. 2: The Defendant attempted to kill Bertha
18 Tardy. 3: The Defendant intended the killing of Bertha
19 Tardy take place. 4: That the Defendant contemplated that
20 lethal force would be employed. Any one of those factors is
21 sufficient to go further. The simplest one is that he
22 actually killed her because all four of them were actually
23 killed. So we would submit that that one pretty well covers
24 them all because that also includes the fact that he intended
25 that deadly force be used and intended the killing. It's not
26 an attempted killing because she was, in fact, killed so 2
27 really doesn't apply. But all the other three would, but
28 they are all three included in the fact that he actually
29 killed her.

Sentencing Phase Argument by Mr. Evans

1 That's the first thing you do on each set of the
2 instructions. You look at those factors, determine which
3 ones of those apply before you go further. Then it says,
4 "Next, to return the death penalty, you must find that the
5 mitigating circumstances" -- now remember what I told you on
6 voir dire; the mitigating circumstances are what the Defense
7 is putting on to try to justify a life sentence. "You must
8 find that the mitigating circumstances, which tend to warrant
9 a less severe penalty of life imprisonment without parole, do
10 not outweigh the aggravating circumstances." The aggravating
11 circumstance in this case is that the capital offense was
12 committed for pecuniary gain during the course of a robbery.
13 So if you find in each case that these individuals were
14 killed - that was the factor of the first group - that this
15 was an offense committed for pecuniary gain during the course
16 of a robbery, then unless you find that their mitigating
17 factors outweigh that, you may impose the death penalty.

18 And that is where we got into the factor the other
19 day about the Court authorizing imposition of the death
20 penalty. You take it step by step. You go through the
21 instructions. Did he kill Bertha Tardy. Was this a robbery?
22 If it is, then if his mitigators don't outweigh that, you can
23 impose the death penalty, and you go further through the
24 instruction. It is complicated, but it's really that simple.
25 The mitigating circumstances that they have given, the Court
26 has given them in this instruction right here, and the Court
27 has gone through them. That he has no history of prior
28 criminal activity; that he has a good prison record with no
29 rules violations; that he follows rules and regulations of

Sentencing Phase Argument by Mr. Evans

1 the prison, does as he is told and does not cause trouble for
2 guards; that he has a loving supporting family and many
3 friends; any and all factors relative to the background,
4 life, environment, emotional makeup of Curtis Flowers which
5 would be mitigating circumstances or should be considered -
6 and that is circumstances that you have heard in the record -
7 any other circumstances or combination of circumstances of
8 the crime or of the life and character of Mr. Flowers which
9 you believe should mitigate in favor of a sentence of life.

10 If you feel like those circumstances outweigh what
11 he did, then a life sentence would be appropriate. If they
12 don't outweigh it, the death penalty is appropriate in this
13 case.

14 Once you have done that, even before you reach your
15 verdict, on the next page, which is the form, there are
16 findings that the jury is to make. The first part up here
17 under one, "We, the jury, unanimously find from the evidence
18 beyond a reasonable doubt that the following facts existed at
19 the time of the commission of the capital murder of Bertha
20 Tardy," and this is where the factors go in that he intended
21 to kill her, in this section right here.

22 Then you go to the next section. This is where the
23 aggravating factors go in that you unanimously find. "We,
24 the jury, unanimously find the aggravating circumstance of,"
25 and you write it in here. Above that it says write in the
26 aggravating circumstances presented in Section B of this
27 instruction that you unanimously agree existed beyond a
28 reasonable doubt. Then at that point if you find that the
29 mitigating circumstances do not outweigh that, the foreman,

Sentencing Phase Argument by Mr. Evans

1 if you agree, can sign the verdict imposing the death
2 penalty.

3 The penalty in this case is left entirely up to the
4 jury. But that is why I spend as much time as I did on voir
5 dire and the Judge covered this with you too. Each of you
6 told us on voir dire that if the law authorized imposition of
7 the death penalty and the facts justified it, that you could
8 vote for the death penalty. This is a case that the death
9 penalty is appropriate in. I think if you will think about
10 the facts of the case, how this crime was committed, what
11 this Defendant did, the fact that these people didn't do
12 anything to harm anyone; they were just innocent people at
13 work. You can look at all those factors. Look through those
14 factors, and the verdict in this case, I think you will
15 agree, would be, We, the jury, agree on the penalty of death.

16 The facts in this case justify the death penalty,
17 and you are the ones that make that determination. You are
18 the only ones that can look at that.

19 Mitigating factors in there: The Defendant has a
20 lot of family and friends. That was true with each of the
21 victims also. This is a terrible case, a terrible crime.
22 Four people were killed. The verdict in this case should be
23 equal to the crime. I think that the jury will make a
24 determination that the only appropriate penalty for the facts
25 of this particular case can be the death penalty.

26 This phase is completely different than the first
27 phase that you were looking at. In that you had to determine
28 whether he was guilty, look at all the facts of the case. In
29 this case you really don't even have to worry about things

Final Argument by Mr. Evans - by Mr. Carter

1 like the bullets and the shoes and all that. It just boils
2 down to one thing: What penalty is appropriate for this
3 Defendant for what he did? And can these mitigating factors
4 that they have brought to your attention outweigh the fact
5 that he deserves the death penalty?

6 Like I told you, I'm not going to be long up here
7 because y'all have heard it all. I do ask that you consider
8 what I have said to you. I ask that when you do go back in
9 the jury room, you return the appropriate penalty in this
10 case in all four cases of the death penalty. And each of
11 these cases, just like when you were back there on the guilt
12 phase, each of these has a separate set of forms. You have
13 got to fill out the forms for each one of the counts that he
14 has been convicted on because he is looking at all four of
15 those as far as sentence also.

16 (State's Counsel confer.)

17 **BY MR. CARTER:** May I proceed, Your Honor?

18 **BY THE COURT:** Yes. You are through, aren't you
19 Mr. Evans?

20 **BY MR. EVANS:** Yes.

21 FINAL ARGUMENT BY MR. CARTER ON SENTENCING PHASE:

22 Good afternoon. Early this morning a lady stopped
23 me and told me she thought I needed to apologize to somebody,
24 and it stunned me, even probably shocked me. And because I
25 have a warrior nature, I backed up and said, "Get away from
26 me." Now I don't think I did anything to apologize, that
27 warrants apologizing. I certainly didn't do anything to
28 anybody knowingly, but if I did something to any of you and I
29 need to apologize, then I apologize as well as to anybody

Final Argument by Mr. Carter

else.

Now you had this hard job to do, and so did I. And you went back and you deliberated. You stayed back there for two and a half hours, so I know you deliberated and you thought about it, your job, and you didn't do it automatically. And I thank you for that. I notice when the family of the victims were on the witness stand and telling their stories, many of you cried, and that is understandable. And I would bet that you thought of the victims' families as well as your own families.

But I would also bet that not many, if any, thought of Mr. Flowers' family. Mr. Flowers' family are victims too, not victims in the same manner, but victims too. Had they been able to stop this, I'm sure they would.

When I was nine years old, a little girl knocked my books off my desk, and I picked them up neatly and put them back on the desk, and she did it again. I picked them up again and put them back on my desk again. She did it again. She did it five times. By that time I was enraged, and I wanted to hurt her. And her big sister got between us so that I couldn't get to her. And I'm not proud of this, but I tried to kill her big sister so that I could get to her. But I never could, so I beat the girl up. And the teacher came in, and I was so enraged that I wasn't even afraid of the teacher. The teacher hit me, and I snatched the switch from her, and said, "Don't hit me again." They sent me to the principal's office. I was still enraged. The principal pulled out a knife, and I still wasn't afraid. Looking back, I acted inappropriately because I was nine or ten. I didn't

Final Argument by Mr. Carter

1 have sense enough how to act. I hadn't learned. I hadn't
2 been taught.

3 When the schools were integrated, I had to change
4 schools, and about ten of us were taken and placed in this
5 class with all white kids, and all the other black kids were
6 put in this one class. And I was told I couldn't compete,
7 but we ten were told we couldn't compete with the other kids
8 in our class. Within a short period of time not only was I
9 competing, I was beating them. And I was called names, but I
10 didn't get mad and go and get revenge. I believe in the
11 power of love and redemption. Great things have happened as
12 a result of love and redemption.

13 There is a song that has some lyrics. There is a
14 -- (Pause) that say anybody with a heart can love me. And if
15 you can love me, you can also love Mr. Flowers despite what
16 he is accused of. We don't know what love is. God had to
17 tell us one time. He told us in I Corinthians 13, 4 through
18 8. Love suffers long, is kind; love endeth not; wanteth not
19 itself; is not puffed up; does not behave itself unseemly;
20 seeketh not our own; is not easily provoked; thinketh no
21 evil; rejoices not in the evil but rejoices in the truth.
22 Bears all things, believes all things, hopeth all things,
23 endures all things.

24 The incident with the girl and with the school
25 taught me that an eye for an eye, tit for tat, tooth for
26 tooth, doing to others as they have done to you is not proper
27 and not Christian. Anybody who thinks killing a person who
28 has killed somebody else will give them any relief or
29 closure -- I think and this is just my opinion -- is

Final Argument by Mr. Carter

misguided and devoid of the true meaning of life. It's your happiness, your closure, your peace; this is just my opinion.

BY MR. EVANS: Your Honor, personal opinions.

I don't think, are appropriate for closing argument from either side.

BY MR. CARTER:

I'm talking about the decision of life and death. If you believe Mr. Flowers killed these people, that is fine; you have said that. But I bet you if Mr. Flowers did it, Mr. Flowers did not go down there to Tardy Furniture Store and stay there nine days trying to decide if he could kill those people or not. If he did it, he snapped, and it happened suddenly. He didn't have a time to cool down, to change his mind.

We have been here nine days, and we know why we have been here. And we know what the decision has to be, one or the other. You never have to vote for death. You never ever have to vote for death. I don't care what they say, and I know I'm right and they know I'm right. Death should be a last resort, and it should be for the worst criminals on earth, and Mr. Flowers is not one of them. Mr. Flowers is not Adolph Hitler. He is not Timothy McVae. He is not Osama bin Laden, and he is not Ted Kezinsky. How is jail without the possibility of parole is too good for Mr. Flowers?

Jim Aiken, our expert, said - a very talented man I might add - said that Mr. Flowers do good in prison. He didn't think Mr. Flowers had any future dangerousness. Mercy alone is enough to vote for life instead of death, and we ask for mercy. Maybe you think Mr. Flowers didn't show any, but

Final Argument by Mr. Carter - by Mr. de Gruy

1 you can show some if you want to. The decision is yours, and
2 you have had nine days to think about it.

3 I know death is a hurtful thing, and unfortunately,
4 it happens to every single one of us. But nobody wants to go
5 like that, and I understand that. I lost two of my brothers.
6 Somebody killed two of my brothers and one of my uncles. And
7 I didn't seek punishment from either because I knew
8 punishment wouldn't do me any good. It may do somebody some
9 good whose life is some kind of way, I guess connected to
10 whether the killer dies, but my life is not connected that
11 way. My life, I feel, and I feel the life should extend
12 beyond an individual regardless of how much we love them.
13 But if you think death is appropriate and it's going to bring
14 closure and peace and joy and do these people any good and
15 you some good, then vote for it.

16 Finally, what we do, how we respond when faced with
17 arduous circumstances defines who we are. Thank you.

18 FINAL ARGUMENT ON SENTENCING PHASE BY MR. DE GRUY:

19 Good afternoon. Nobody has ever disputed that four
20 very fine people were killed on July 16, 1996. We have never
21 disputed that. We certainly understand the suffering of the
22 family. The only dispute we had was who was responsible for
23 those killings. I can imagine the thoughts that were racing
24 through your mind as you listened to that testimony this
25 morning from the State. I will tell you; I was thinking of
26 my father who I lost when I was 16. And I think about that a
27 lot now because I have a 12 year old son, and he is my only
28 son. And on my desk I have a double frame; I have a picture
29 that was taken of my father and I at my first communion. And

Final Argument by Mr. de Gruy

1 we took the exact same pose with my son and I, and they are
2 together and framed on my desk. I know you have all had
3 those kind of experiences in our life. I'm not unique, and I
4 understand that. And I was touched just like all of you as
5 you sat here listening. You have to be.

6 But what do we do with that testimony now?
7 Fundamentally, I believe that we are not a people of
8 vengeance. We are a people of justice, tempered with mercy.
9 It is almost inhuman to put you in this position of how you
10 evaluate this kind of evidence. It's -- Mr. Evans was right.
11 It's not like what you heard at the first phase. How do you
12 deal with this, in the giving of the instructions of law --
13 one, two, three, and you know you can't do that as a human
14 being. And it's a struggle. I don't envy your task. It's a
15 struggle I don't know how you are going to deal with. But
16 each one of you have been given that task, the task of
17 determining the appropriate punishment.

18 Yesterday's verdict, the decision was made. He
19 will be punished, and he is going to be punished severely no
20 matter what you decide today. He is going to die in prison.
21 Will he die when the State of Mississippi says so, or will he
22 die when God says so? That decision has been forced on you.
23 I can't tell you enough times how really unfair I think that
24 is, that we have done that to you. But that is how our
25 system works. That is our how our country works. It
26 entrusts decisions like this, not to lawyers and judges, not
27 to government officials; we trust it to you. I know we were
28 here for four days to get to this jury. None of you were
29 volunteering for this job. I am sure when your name was

Final Argument by Mr. de Gruy

1 called, you were perhaps looking around wondering how come
2 me. I am sure there is not one of you who wouldn't rather be
3 somewhere else today. But this is your task.

4 The State of Mississippi cannot put Curtis Flowers
5 to death without each one of your consent. Each one of you
6 has to give permission. Curtis' life is about to be put in
7 your hands. The question is, is it necessary? Do we have
8 to? Do you have to take his life? I think the answer is
9 clearly no. We don't have to. It's not necessary. He will
10 be removed from society forever. It's not a second chance.
11 He is not being let off light. If you vote for life, it
12 means life without parole, the only option you have.

13 We all recognize the horrendous tragedy on July 16.
14 This community has lived with it since that day. It is not
15 going to change after today. I suspect that most of you knew
16 the extent of this tragedy. None of you were surprised by
17 what you heard this morning. You can imagine; you knew that
18 four people had been killed. You knew that when you walked
19 in, and you knew that when you took the witness stand and we
20 questioned you. You assured the Court; you assured all of us
21 at that time that you would not automatically vote for the
22 death penalty even knowing that four innocent people were
23 killed. At the time you knew that there had been a robbery,
24 and you said, I'm going to consider other factors. I want to
25 know more if I'm selected for this jury.

26 We talked in the abstract back then. Now the Judge
27 has told you; this is something for you to consider. You are
28 authorized to consider. And that is as far -- and the Judge
29 was straight up with you last week. He told you that's as

Final Argument by Mr. de Gruy

1 far as I'm ever going to go. It's up to you, each one of
2 you. You absolutely do not have to do it. It's solely your
3 decision.

4 The Court has now told you based on the evidence
5 that has been presented, what you know about this case, that
6 you can, you can put one thing on death side of the scale.
7 He tells you it's a weighing process. We talked about
8 weighing. It doesn't help a whole lot when, how you attach
9 weight to these things, but the only thing you can put on
10 death side of the scale is the aggravating circumstance, the
11 circumstance that you knew about last week -- there was a
12 killing for money. The Court has told you in the
13 instruction -- and you will have those with you -- that's
14 what you can put on death side of the scale. You have to
15 balance that with everything about Curtis' life, his basic
16 humanity, not just what you have found that he did on that
17 afternoon or that morning. That's what it comes down to.

18 You have to put those, human life on one side of
19 the scale and the robbery for money, the killing for money.
20 You have got to look again because the Judge tells you again
21 you must find beyond a reasonable doubt. And again, you
22 deliberated a very long time yesterday, and the Court has
23 instructed you. You had a night to sleep on it. That is
24 something you have to look at again. If you don't find that
25 one circumstance, your duty is over. If you don't find that
26 today beyond a reasonable doubt, your instructions are clear;
27 you just report that to the Court. We talked about it last
28 week, and the Judge has now instructed you. It can be
29 anything about Curtis' life you can weigh on the other side

Final Argument by Mr. de Gruy

of that scale.

And as I was talking to many of his family and friends and we were trying to figure out who best and what the best cross section of his, of the people he has touched in his life to come forward, it was a difficult task. How do you know about circumstances of someone's life in just a few brief moments from their friends and family? I don't know that I will ever feel like I have done enough.

Mr. Flowers' father came here as the spokesperson for his family, his mother, his brothers, and sisters. He told you about how close they were, how close they were to Curtis; how Curtis would go out and help neighbors, not because he was sent out there, because he just wanted, somebody needed leaves raked. An elderly man needed to be shaved. And of course, he shared with you the great passion in the family for singing, the time they spent singing gospel music together.

Supervisor Forrest came to tell you about his relationship with Curtis and how he tried -- and I think Mr. Carter was referring to if somebody could have stopped this, a man like Mr. Forrest would have if he could have. Tarryon Daniels is a life long friend, played ball with Curtis, fishing. They worked together for years. He is also a singing partner. He used to sing with Curtis.

Kittery Jones is his cousin, and they grew up together. They were more like brothers. Kittery himself is not a singer, unusual in the family. He just enjoyed the listening to the music, listening to Curtis sing.

Then we brought in a man who is an expert in

Final Argument by Mr. de Gruy

1 Corrections because I think you need to know. I think these
2 are concerns you should have, where we are sending this man.
3 Will somebody else be in the picture? He told you over 30
4 years of experience dealing with the penitentiary systems all
5 over the country his involvement in every aspect of
6 corrections. He told you about how Curtis has conducted
7 himself. We didn't talk about during the trial, and many of
8 you knew about the prior trial. We didn't talk about it, and
9 we asked those of you who knew about it to set it aside, but
10 you know now that he has been incarcerated since January of
11 1997. Most of that time he has been on, in maximum security,
12 close security being watched 24/7. Mr. Evans was asking
13 well, doesn't that keep-- doesn't that make him act right?
14 And was inferring that at Parchman, unlike every other
15 penitentiary in the world, everybody gets along well. We all
16 certainly know that is not true. We know the problems in
17 prisons.

18 The point he was making with the 24/7 was you can't
19 get away with anything. Yet Curtis had zero rule violations.
20 He is making an effort to stay out of trouble. He told you a
21 little bit about the environment, how unusual that is, that
22 he would expect 30, 40, 50 violations. Zero violations.
23 It's a seven year period.

24 Mr. Evans said well, you know, someone who did
25 this, don't you think they would be a danger based on the
26 thousands and thousands and thousands of classifications. He
27 said no, and unlike most of his classifications, he did
28 interview in this case because it's an important decision you
29 have to make, and you should have as much information as

Final Argument by Mr. de Gruy

possible.

You heard about what the rest of Curtis' life will be like. You know no matter what, which sentence you choose, there is no more basketball with friends, no more fishing with his father, helping mom and his neighbors. Will Curtis ever be able to share his beautiful God given voice? I hope so. Not for him. But like Kittery told you, just the pleasure to hear him sing. I will concede that as a maximum security inmate, it's unlikely that he will be given that opportunity. I don't suspect that they would do that. But I have hope. There are not many of us who sing well. Kittery admitted he didn't, and I can tell you I can't sing at all. But when I stand in church and hear those truly blessed parishioners around me who can sing, that inspires me. I get that gift; it's not for them. We shouldn't take that gift away from all of us no matter what.

The State cannot take Curtis Flowers' life unless each one of you individually, and the instruction is clear on that, unless each one of you individually make the decision to tell them that they can do that. You don't have to choose death. It's not necessary in this case. Not vengeance, but justice tempered with mercy. It's what we are asking for. I'm not ashamed to ask for it. Another death is not the answer in this case. Like Reverend Latham said, it's time to begin the healing. It's what we agree on. It's time for life.

I have to sit down, and Mr. Evans will be back up here. I'm just begging you, spare my friend's life. Thank you.

Final Argument by Mr. Evans

FINAL ARGUMENT BY MR. EVANS:

A few more minutes and this case will go to y'all. There are a few things I want to talk about. Who was there to beg for mercy for the four people that got killed at Tardy Furniture? Opposing Counsel wants to argue to you that the Defendant snapped; it was just a split second thing. How do you snap when you plan and carry out steps of a crime? How do you snap when you walk from your house and get the gun and walk back to your house? How do you snap when you then walk from your house to the store and take the time to deliberately shoot four people in the head and then take the time to take the money out of the cash drawer? That is not snapping.

You are not here to forgive. That is what you have been asked by the Defense to do. You are here for the purpose of determining what penalty is appropriate for Curtis Flowers for what he did. That is what your job is. That is what you have to do. Opposing Counsel wants to say well, he needs to be in prison so he can sing and he can do all these things. These four victims never committed a crime in their life, but don't you think their family would like --

BY MR. CARTER: --Your Honor, I object to that--

BY MR. EVANS: --for them to be able to be in prison--

BY THE COURT: -- Overruled.

BY MR. EVANS:

Don't you think they would like to be able to hear them sing? They don't have that option.

Opposing Counsel says oh, you can lock him down in

Final Argument by Mr. Evans

1 Parchman in maximum security, and he is not too dangerous
2 when he is being watched over there. The whole purpose of
3 what we are here for is the facts of this case. Look at the
4 case and look at what he did. The facts justify the death
5 penalty. If you will look at the facts, you will make that
6 determination. This case justifies the death penalty because
7 of what he did.

8 As we covered with you on voir dire, there are only
9 certain cases in Mississippi that the death penalty is even
10 appropriate. This is one of them. And this isn't just one
11 death; this is four deaths. Four separate people's lives
12 were taken for no reason.

13 I'm not going to waste y'all's time by standing up
14 here any more because y'all know from the facts of the case
15 what is there. This is not a case that can be decided on
16 anything except the law and the facts. Unless you find that
17 these mitigating factors that they are telling you outweigh
18 the aggravating factor and what he did, the death penalty is
19 appropriate in this case. As I told you that I would do on
20 voir dire, I told you then that I would be asking for the
21 death penalty, and that is what I am asking you to do. I am
22 asking that you go to the jury room. You go through the form
23 that the Judge gives you, fill it out, and return a verdict
24 on each of the four counts of death because that is the
25 appropriate penalty in this case. You will find that from
26 going through the evidence.

27 That's all I have, Your Honor.

28 **BY THE COURT:** Ladies and gentlemen, it is now
29 time for y'all to retire and consider these options.

Jury retires to consider verdict

1 As I told you, there are four verdict forms, one for
2 each count. When you have reached a decision in each
3 of those counts, then you should fill out this form in
4 accordance with these instructions that I have given
5 you, and knock on the door and return it back into
6 Court. You can go to the jury room. There will be
7 some-- we are going to deliver the exhibits and stuff
8 to you so you will have them for your deliberations.

9 JURY RETIRES TO CONSIDER SENTENCING VERDICT AT 2:50 PM.

10 **BY THE COURT:** Let me see y'all up here just one
11 second.

12 (CONFERENCE AT THE BENCH WITH THE JURY OUT:)

13 **BY THE COURT:** I don't know how this happened. I
14 wasn't, I guess I just missed it and y'all did too
15 when you were going through the instructions. The
16 State's Sentencing Instructions A, B, C and D that I
17 read to the jury, all of them had the same language
18 except D, which on this it did not for some reason or
19 other, after "life imprisonment" did not have "without
20 parole." All the others did, and everything else has
21 it. I would like to interline that.

22 **BY MR. DE GRUY:** Yeah, I think that would be
23 fine.

24 **BY THE COURT:** Without parole.

25 **BY MR. EVANS:** No objection. I think you found
26 out earlier in the week none of us can read anyway.

27 **BY THE COURT:** Well, I just proved I can't.

28 **BY MR. DE GRUY:** Clyde, you caught everything
29 else. How did you miss that?

Verdict

1 **BY THE COURT:** Okay.

2 (THE JURY WAS DELIVERED THE COURT'S INSTRUCTIONS
3 AND THE EXHIBITS THAT WERE RECEIVED IN EVIDENCE. THE COURT
4 WAS IN RECESS AWAITING THE VERDICT. UPON THE JURY'S KNOCK AT
5 3:49 PM, COURT WAS BROUGHT BACK TO ORDER, AND WITH ALL
6 COUNSEL AND THE DEFENDANT PRESENT, THERE WAS THE FOLLOWING:)

7 **BY THE COURT:** The jury has indicated that they
8 have a verdict?

9 **BY THE BAILIFF:** Yes, sir.

10 **BY THE COURT:** All right, the jury has indicated
11 that they have a verdict at this phase of the trial.
12 I say once again what I said yesterday. I will not
13 tolerate disruptions in this courtroom, whatever the
14 verdict may be on this phase of the trial. The
15 Sheriff is directed to take into custody anybody that
16 does so disturb this courtroom or, in fact, this
17 courthouse. All right. You may bring them in.

18 JURY RETURNS TO THE COURTROOM.

19 **BY THE COURT:** Ladies and gentlemen, have you
20 reached a verdict on each of the counts in this case?

21 **BY A JUROR:** Yes, sir.

22 **BY THE COURT:** Is it, is each verdict on the
23 sentencing phase, the verdict of all twelve of you?

24 **BY A JUROR:** Yes, sir.

25 **BY THE COURT:** Would you hand the verdicts to the
26 bailiffs?

27 (Verdicts handed to the Court and then to the
28 Clerk.)

29 **BY THE COURT:** The Defendant will rise. Read the

Verdict

1 verdicts, ma'am.

2 **BY THE CLERK:** "Your verdicts should be written
3 in one of the following forms: We, the jury,
4 unanimously find from the evidence beyond a reasonable
5 doubt that the following facts existed at the time of
6 the commission of the capital murder of Bertha Tardy.
7 List or itemize all facts found, if any, from the list
8 under Section A of this instruction which you
9 unanimously agree exists in this case beyond a
10 reasonable doubt. That the defendant actually killed
11 Bertha Tardy. We, the jury, unanimously find that the
12 aggravating circumstances of: Write the aggravating
13 circumstances presented in Section B of this
14 instruction if you unanimously agree it or they exist
15 in this case beyond a reasonable doubt. The capital
16 offense was committed for pecuniary gain during the"
17 excuse me, "the course of a robbery. Exists beyond a
18 reasonable doubt and is sufficient to impose the death
19 penalty and that there are insufficient mitigating
20 circumstances to outweigh the aggravating circumstance
21 and we further find unanimously that the defendant
22 should suffer death." Signed foreman of the jury.
23 Verdict form. "Your verdict should be written in one
24 of the following forms. We, the jury, unanimously
25 find from the evidence beyond a reasonable doubt that
26 the following facts existed at the time of the
27 commission of the capital murder of Robert Golden.
28 List or itemize all facts found, if any, from the list
29 under Section A of this instruction which you

Verdict

1 unanimously agree exists in this case beyond a
2 reasonable doubt. That the defendant actually killed
3 Robert Golden. We, the jury, unanimously find that the
4 aggravating circumstances of: Write the aggravating
5 circumstances presented in Section B of this
6 instruction if you unanimously agree it or they exist
7 in this case beyond a reasonable doubt. The capital
8 offense was committed for pecuniary gain during the
9 the course of a robbery. Exists beyond a
10 reasonable doubt and is sufficient to impose the death
11 penalty and that there are insufficient mitigating
12 circumstances to outweigh the aggravating circumstance
13 and we further find unanimously that the defendant
14 should suffer death." Signed foreman of the jury.
15 "Your verdict should be written in one of the
16 following forms. We, the jury, unanimously find from
17 the evidence beyond a reasonable doubt that the
18 following facts existed at the time of the commission
19 of the capital murder of Carmen Rigby. List or
20 itemize all facts found, if any, from the list under
21 Section A of this instruction which you unanimously
22 agree exist in this case beyond a reasonable doubt.
23 That the Defendant actually killed Carmen Rigby. We,
24 the jury, unanimously find that the aggravating
25 circumstances of: Write the aggravating circumstances
26 presented in Section B of this instruction if you
27 unanimously agree it or they exist in this case beyond
28 a reasonable doubt. The capital offense was committed
29 for pecuniary gain during the course of a robbery.

Verdict

1 Exist beyond a reasonable doubt and is sufficient to
2 impose the death penalty and that there are
3 insufficient mitigating circumstances to outweigh the
4 aggravating circumstance, and we further find
5 unanimously that the defendant should suffer death."
6 Signed foreman of the jury.

7 "Your verdict should be written in one of the
8 following forms. We, the jury, unanimously find from
9 the evidence beyond a reasonable doubt that the
10 following facts existed at the time of the commission
11 of the capital murder of Derrick Stewart. List or
12 itemize all facts found, if any, from the list under
13 Section A of this instruction which you unanimously
14 agree exists in this case beyond a reasonable doubt.
15 That the defendant actually killed Derrick Stewart.
16 We, the jury, unanimously find that the aggravating
17 circumstances of: Write the aggravating
18 circumstances presented in Section B of this
19 instruction if you unanimously agree or they exist
20 in this case beyond a reasonable doubt. The capital
21 offense was committed for pecuniary gain during the
22 the course of a robbery. Exists beyond a
23 reasonable doubt and is sufficient to impose the death
24 penalty and that there are insufficient mitigating
25 circumstances to outweigh the aggravating circumstance
26 and we further find unanimously that the defendant
27 should suffer death." Signed foreman of the jury.

28 **BY THE COURT:** Do you want the jury polled?

29 **BY MR. DE GRUY:** Yes, Your Honor.

Jury Polled

1 BY THE COURT: Ma'am, are all of these your
2 verdicts?

3 BY A JUROR: Yes, sir.

4 BY THE COURT: How about you, ma'am?

5 BY A JUROR: Yes, sir.

6 BY THE COURT: You, ma'am?

7 BY A JUROR: Yes, sir.

8 BY THE COURT: You, sir?

9 BY A JUROR: Yes, sir.

10 BY THE COURT: You, ma'am?

11 BY A JUROR: Yes, sir.

12 BY THE COURT: You, ma'am?

13 BY A JUROR: Yes, sir.

14 BY THE COURT: You, ma'am?

15 BY A JUROR: Yes, sir.

16 BY THE COURT: You, ma'am?

17 BY A JUROR: Yes, sir.

18 BY THE COURT: You, sir?

19 BY A JUROR: Yes, sir.

20 BY THE COURT: You, ma'am?

21 BY A JUROR: Yes, sir?

22 BY THE COURT: You, ma'am?

23 BY A JUROR: Yes, sir.

24 BY THE COURT: You, ma'am?

25 BY A JUROR: Yes, sir.

26 BY THE COURT: Okay, I find that the verdicts are
27 unanimous. Mr. Flowers, you have now been convicted
28 of four counts of capital murder, and the jury has now
29 sentenced you to death on each count. By law, those

Trial Adjourned

1 verdicts are automatically appealed to the Mississippi
2 Supreme Court. I appoint the Office of Capital
3 Defense to represent you on that appeal. You are now
4 remanded to the custody of the Sheriff pending that
5 appeal.

6 Ladies and gentlemen, at this time I'm going to let
7 y'all go back to the jury room for just a minute, and
8 I then will have some instructions for the rest of
9 you.

10 DEFENDANT IS ESCORTED FROM THE COURTROOM.

11 **BY THE COURT:** Anything further from the Court?

12 **BY MR. EVANS:** Not from the State.

13 **BY MR. DE GRUY:** No, Your Honor.

14 **BY THE COURT:** Court is adjourned at this time.

15 TRIAL WAS RECESSED ON FEBRUARY 12, 2004.
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Post Trial Motion Hearing

1 (ON MARCH 16, 2004, COURT WAS OPENED IN WINONA,
2 MISSISSIPPI, FOR A HEARING ON POST TRIAL MOTIONS. PRESENT
3 REPRESENTING THE STATE WERE HONORABLE DOUG EVANS AND
4 HONORABLE CLYDE HILL. PRESENT REPRESENTING THE DEFENDANT
5 WERE HONORABLE ANDRE DE GRUY AND HONORABLE STACY FERRARO.
6 THE DEFENDANT WAS ALSO PRESENT:)

7 BY THE COURT: Are we ready to proceed?

8 BY MR. DE GRUY: Yes, Your Honor.

9 BY MR. EVANS: Yes, sir.

10 BY THE COURT: This is cause number 2003-71,
11 State of Mississippi versus Curtis Giovanni Flowers.
12 It is before the Court on a motion for new trial,
13 Mr. Flowers having been convicted of capital murder on
14 February 11th, 2004, and on February 12th, 2004, being
15 sentenced to death by the jury. All right, Mr. de
16 Gruy.

17 BY MR. DE GRUY: Your Honor, we have no
18 additional evidence to present at this time. We have
19 filed the Motion for New Trial, a three page motion
20 which we believe fairly sets forth the objections we
21 made at trial. And with all respect to the Court's
22 orders at trial, we would ask that they be
23 reconsidered. In particular, that the issue on the
24 strikes, the Batson strikes of the jurors in this
25 case; that again reminding the Court of the -- the
26 Court made a prima facie finding of discrimination.
27 And in that so the record is clear, one member of the
28 jury was African-American, in this county which is
29 45 percent African-American. Every single one of the

Post Trial Motion Hearing

1 State's strikes were against African-Americans, and
2 again, our specific objections that there were white
3 jurors who were similarly situated to African-American
4 jurors who were removed. I believe we have clearly
5 made our record at the trial on that. We would ask
6 the Court to again reconsider that ruling in addition
7 to the points we raised in our motion. We have again
8 no additional evidence to present at this time.

9 **BY THE COURT:** Okay, I have got a couple of
10 questions I need to ask.

11 **BY MR. DE GRUY:** Yes.

12 **BY THE COURT:** Okay, in number four on the Motion
13 for New Trial, you ask that all motions that the
14 Defense filed should have been granted. Do you have
15 any specific motions that you are talking about?

16 **BY MR. DE GRUY:** We filed 32 motions or reraised
17 32 motions, and there was a pretrial hearing on those
18 motions.

19 **BY THE COURT:** The reason I ask that is I think
20 most, the vast majority of those were granted, and I'm
21 trying to really understand which ones, which one that
22 I denied that you are objecting to. A lot of them
23 were stock motions.

24 **BY MR. DE GRUY:** Right. The motion -- we filed a
25 motion on two of the cases for a speedy trial, Motion
26 to Dismiss for Speedy Trial. They had never been
27 prosecuted since 1996.

28 **BY THE COURT:** Okay.

29 **BY MR. DE GRUY:** And the Court overruled on that.

Post Trial Motion Hearing

1 **BY THE COURT:** I will adopt my ruling on that
2 one.

3 **BY MR. DE GRUY:** We had moved to invoke the rule
4 prior to voir dire, and the Court denied that.

5 **BY THE COURT:** Okay, I rely on my ruling there
6 too.

7 **BY MR. DE GRUY:** And this motion was also again
8 made at trial when it became apparent in the jury
9 selection that the State was relying on the NCIC
10 reports. We had -- the Court denied us our request
11 for any NCIC reports that they ran, and they clearly
12 did run some.

13 **BY THE COURT:** Okay. On that particular motion,
14 has the State got a response?

15 **BY MR. EVANS:** Yes, Your Honor.

16 **BY THE COURT:** I mean on that issue, excuse me.

17 **BY MR. EVANS:** To start with, the State cannot
18 and does not have NCIC run on all jurors. That is not
19 something that we can do. In this particular case
20 after looking at the questionnaires and the ones that
21 stated that they had criminal records and ones that
22 didn't, there were a couple that law enforcement
23 thought had criminal records. They did run NCIC
24 reports. They were furnished to me. I think there
25 were two that I had that didn't answer. One of those
26 people, even though they had not answered it on their
27 questionnaire, admitted to the Court during initial
28 questioning that they were a convicted felon. So that
29 one was not necessary. The only one of them that I

Post Trial Motion Hearing

1 had that was relevant was one that completely denied,
2 even after the Court's questioning, that he had ever
3 been convicted of anything, and I brought out on voir
4 dire with him that I had a copy of his NCIC report
5 showing that he was a convicted felon, was
6 convicted -- I think it was in Cook County, Illinois,
7 and at that point he admitted that that was true.

8 But to start with, we only had a few, and it was
9 ones that were specifically run that had, law
10 enforcement had a reason to run. It is something that
11 is not discoverable. It is only used for the purpose
12 of trying to determine if someone is a competent
13 juror. And in this particular case that did, in fact,
14 possibly save a mistrial on this case because we were
15 able to eliminate someone that was apparently trying
16 to sit on the jury that had a criminal record. So
17 it's not run on all jurors. It is something that we
18 had on a couple, and we made it be known to the Court
19 what we had on that juror.

20 **BY THE COURT:** Any response to that?

21 **BY MR. DE GRUY:** Yes. As far as the jurors that
22 we know they used them on, we know and I believe the
23 District Attorney has acknowledged that they did run
24 others. I think that what they ran, the Court needs
25 to see what they ran, and I think it also ties in with
26 the entire jury selection process and particularly, if
27 all the jurors that they ran NCIC's on were African-
28 American. We don't know because they are refusing to
29 disclose the NCIC's that they ran.

Post Trial Motion Hearing

1 **BY MR. EVANS:** I think I have answered that, Your
2 Honor. We did not--

3 **BY THE COURT:** -- I think you just said you did.

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** His answer, if I can understand it
6 correctly, is the ones that he did run he furnished.
7 The ones, the rest of them he didn't run.

8 **BY MR. EVANS:** The only ones that were run that I
9 know of are ones that had either admitted that they
10 had criminal records -- the ones that law enforcement
11 had some reason to believe had a criminal record. And
12 the whole purpose of this, as this Court is well
13 familiar, a case that I had in Attala County. We
14 ended up with a convicted felon on the jury. My
15 argument then was that that would be of benefit to the
16 defense, not the state, but the Supreme Court reversed
17 the case because that juror did not answer.

18 So our benefit is not necessarily for jury
19 selection, but it's to make sure that the Court
20 doesn't end up with somebody on a jury that may be a
21 convicted felon. Anyone that came back that had a
22 record that we had we would definitely have to furnish
23 to the Court because we don't want somebody sitting as
24 a juror that would cause a mistrial.

25 **BY THE COURT:** I will adopt my ruling on that,
26 the ruling denying it. Okay.

27 **BY MR. DE GRUY:** That's the extent of the
28 pretrial motions that were ruled on at the December
29 hearing.

Post Trial Motion Hearing

1 **BY THE COURT:** Okay. All right, the next one is
2 the motions that I granted for the State which should
3 have been denied. What specifically are you talking
4 about there?

5 **BY MR. DE GRUY:** (Pause) I don't have a motion,
6 Your Honor, that they made a formal motion.

7 **BY THE COURT:** Okay. The next one is number six.
8 You are talking about the jurors who were excused for
9 cause that should not have been excused. What
10 particular jurors was that?

11 (Pause while Mr. de Gruy looks through jury lists.)

12 **BY MR. EVANS:** Your Honor, while he is looking,
13 from my memory, the only ones that were struck for
14 cause were on the Court's motion. The only ones that
15 the State moved for cause I don't believe that the
16 Court agreed to excuse.

17 **BY THE COURT:** Well, most of them that were
18 excused for cause were both sides agreed that they
19 could be excused for cause.

20 **BY MR. EVANS:** Yes, sir. But any that the State
21 just specifically asked for cause that were not agreed
22 on, I don't think the Court granted my motion on any
23 of them. I think there were about three that I asked
24 to be struck for cause, and I don't believe any of
25 them were.

26 **BY MR. DE GRUY:** Your Honor, I don't think it's a
27 matter of whether they were removed on his motion.
28 The fact that they were removed for cause -- and I'm
29 looking for the juror's name.

Post Trial Motion Hearing

1 **BY THE COURT:** Well, that is part of your motion
2 is though is that it was on his motion that I excused
3 some for cause.

4 **BY MR. DE GRUY:** Or on the Court's.

5 **BY THE COURT:** Or on the Court's. Well, I
6 understand that. Most of them that were excused for
7 cause were after they got on the stand and admitted
8 among other things that they could not be fair and
9 impartial or that they had an opinion. After most of
10 those -- I would say 95 percent of them or better --
11 both sides put in the record that they had no
12 objection to them being excused for cause. So I'm
13 just trying to find out which ones we are talking
14 about.

15 (Pause while Mr. de Gruy looks further through his
16 jury lists.)

17 **BY MR. DE GRUY:** Your Honor, I apologize. I
18 cannot find a juror unless I have another strike
19 sheet. I thought I had consolidated them all.

20 **BY THE COURT:** Okay. Well, as I have just said,
21 there were very few that were excused for cause that
22 y'all did not both sides agree that they should be
23 excused for cause. As I recall, most of them was
24 because they said they couldn't be fair and impartial
25 or -- well, and there were some on the death penalty
26 question obviously. Those two things took out most of
27 them. Not knowing which jurors you are talking about,
28 I will have to adopt the ruling that I made at the
29 time of the trial as being the ruling of the Court on

Post Trial Motion Hearing

1 this particular motion on that issue. I would assume
2 it's the same way on number seven on the ones where
3 you asked that they be excused?

4 **BY MR. DE GRUY:** Yes, Your Honor.

5 **BY THE COURT:** --for cause. Okay, same ruling.
6 Number eight is on the NCIC reports. I think we have
7 just been over that, and I have ruled on that. Number
8 nine is about limiting voir dire. What in particular
9 are you talking about there, Mr. de Gruy?

10 **BY MR. DE GRUY:** I was attempting to question the
11 jurors about their consideration of mitigation. It
12 was, I believe, specifically during -- no, it was
13 whether or not the juror could consider mitigation.
14 The juror was -- I removed him for cause ultimately,
15 but I wanted to question him further to develop the
16 Witherspoon, the reverse Witherspoon, Morgan strike on
17 this juror. He was -- we objected at the time to
18 being limited in our questioning of him.

19 **BY THE COURT:** Okay. That is to one particular
20 juror?

21 **BY MR. DE GRUY:** It was-- yes. The questioning
22 was on a specific juror.

23 **BY THE COURT:** Okay, then the Court finds that
24 that issue should be overruled simply for the fact
25 that you excused him for cause. Or there may be other
26 reasons--

27 **BY MR. EVANS:** -- I think--

28 **BY THE COURT:** --and I probably ruled on that
29 during the-- in the transcript. I don't know exactly

Post Trial Motion Hearing

1 which juror we are talking about, but if you excused
2 him for cause, I don't see where there is any
3 prejudice there.

4 Okay, the next one is on the Batson issues. I
5 think that issue has been developed extensively.

6 **BY MR. EVANS:** Your Honor, I would like to make
7 something clear in the record on number ten, if I may.

8 **BY THE COURT:** Okay, the first thing let me say
9 is the original jury of twelve was ten white and two
10 black. The next day -- and I have the record here
11 before me. Those twelve were seated, I believe on
12 Wednesday; is that right?

13 **BY MR. EVANS:** Yes, sir.

14 **BY THE COURT:** They were seated on Wednesday.
15 And by agreement of all parties, we agreed to come
16 back the next day and seat the alternates, but to go
17 ahead and get twelve seated which we did. Mr. Booker
18 was one of those. As the record reflects, and I think
19 having looked at it, I think it adequately reflects
20 the situation that occurred. He contacted the
21 bailiff. The bailiff contacted me, and overnight he
22 determined he could not be fair and impartial. He had
23 made up his mind as to the guilt or innocence of
24 Mr. Flowers, and his opinion was that he was innocent
25 and no evidence was going to change his mind. He
26 indicated he could not be fair to both parties in that
27 case. So we dismissed him and seated the alternate,
28 and that left one black juror on the jury. The
29 alternate that was seated was a white female. And

Post Trial Motion Hearing

1 y'all can put anything in the record you would like on
2 that. I think that reflects what happened.

3 BY MR. EVANS: The Court has covered what I
4 wanted to cover for the record.

5 BY THE COURT: And I have read the record, and I
6 think the transcript itself adequately provides a
7 record as to what happened. I think that was the
8 proper procedure. In part -- I just think it was
9 proper. The other thing is I think in Jenkins v.
10 State, which is a case that was my case in Attala
11 County; Mr. Evans was the prosecutor. We had a
12 situation where we seated thirteen, but it was the
13 wrong thirteen. One that wasn't called sat, and one
14 that was left. And we didn't find out until the
15 middle of the trial, and it was a mistrial, and we had
16 another trial on it. And the issue was raised as to
17 how that procedure should have been done. The Court
18 held that we should have, that maybe shouldn't have
19 done a mistrial, but it was not error. But what the
20 proper procedure was was to seat the alternate.
21 That's what we did in this case. So I think we
22 followed, and I think there is precedent for what we
23 did, although I think it was the only avenue for us to
24 go at that time.

25 And as to the record as to the Batson challenges,
26 the prima facie part of the Batson, the race neutral
27 reasons and the rebuttal, I think there is an adequate
28 record on all that. I think my rulings on that are
29 correct, and I adopt those rulings.

Post Trial Motion Hearing

1 Number 11 about the rank speculation from
2 Dr. Hayne. I don't know what you are talking about
3 there.

4 **BY MR. DE GRUY:** He testified that an injury to
5 Ms. Rigby could have been from defense posturing or a
6 fall. And it could have been either one, and he had
7 no way of saying medically, certainly not within a
8 reasonable degree of medical certainty what caused the
9 injury.

10 **BY THE COURT:** Well, Dr. Hayne has testified in
11 this Court I can't tell you how many times. He has
12 testified in cases I have been involved with for
13 fifteen or twenty years, and he is adequately
14 qualified to make those, to give those opinions. It
15 is within his expertise, and it's not speculation.
16 And there was no -- there is nothing in the record
17 really where he was attacked as to whether that was
18 expertise. So that is overruled.

19 Expert testimony concerning shoe comparisons from
20 an unqualified witness.

21 **BY MR. EVANS:** Your Honor, I would ask to be
22 heard just briefly on that one.

23 **BY THE COURT:** Okay.

24 **BY MR. EVANS:** If I understand what this motion
25 is, it's about the officers saying that they looked at
26 everybody's shoes. This is something we are not
27 talking about two of the same type of shoe and pinning
28 down where there are any little differences in it. We
29 are talking about completely different types of shoes,

Post Trial Motion Hearing

1 flat sole shoes in relationship to tennis shoes,
2 things like that. This is not something that would
3 require expert testimony. It was offered as lay
4 opinion. None of these witnesses were offered as
5 experts, and under my interpretation of what the law
6 is now on expert and non-expert testimony, this is not
7 something that should have required expert testimony.
8 It was lay opinion, and each of these people had a
9 sufficient amount of information presented to the
10 Court to allow their testimony as to their personal
11 knowledge and personal opinion.

12 **BY THE COURT:** Mr. de Gruy. Is that what we are
13 talking about?

14 **BY MR. DE GRUY:** Yes, Your Honor; that is.

15 **BY THE COURT:** Okay. I find that anybody could
16 make those opinions as to what type of shoes, what a
17 shoe sole looked like and whether it looked like the
18 imprint. That would be within almost anybody's
19 ability to make, to give that opinion, so that is
20 overruled.

21 Which hearsay testimony from Sheriff Thornburg?

22 **BY MR. DE GRUY:** He testified concerning, that
23 Doyle Simpson told him that his gun was stolen. It's
24 actually contradicted by Mr. Simpson's testimony that
25 he didn't make a complaint that his gun was stolen.

26 **BY MR. EVANS:** Your Honor, the best I can
27 remember, that went in basically as him explaining why
28 he went to Angelica. It was to investigate the fact
29 that a gun had been stolen. It was not anything that

Post Trial Motion Hearing

1 was even introduced for the proof of the fact, just to
2 show why he was there and what he was doing there at
3 the time. Plus Doyle testified, he said the gun was
4 stolen. But as far as the way it came in from the
5 Sheriff, it was to explain why he was down there.

6 **BY THE COURT:** Okay, it was just a report. In
7 any event, Doyle Simpson testified subject to
8 cross-examination on that issue. So that is
9 overruled.

10 On the admitting the enlarged gruesome
11 photographs, really my ruling is pretty clear on that.
12 One, I do not find that the photographs were
13 illegally, were photographs that were so gruesome as
14 to the point where they could not be admitted at
15 trial. There were a limited number of photographs
16 compared to what the State had. The fact that they
17 were enlarged, I think, is of no consequence. I think
18 they could have been enlarged and admitted without
19 admitting the little ones, and I think in effect, it
20 was better for the jury to understand, gave the jury a
21 better basis of understanding the scene with the
22 enlargements than the small ones. So that is
23 overruled.

24 The next one is on my ruling on the lady when she
25 gave her opinion about the popularity of the Grant
26 Hill Filas.

27 **BY MR. EVANS:** Your Honor, on that, I would like
28 to make clear, and I know this is in the record, but I
29 would still like to make the point that the Defense

Post Trial Motion Hearing

1 was allowed to go into how many of these shoes had
2 been sold statewide, worldwide. They were entitled,
3 they were allowed to go into all of that. And I don't
4 see that they were limited in any form or fashion on
5 that.

6 **BY THE COURT:** Mr. de Gruy. Any response?

7 **BY MR. DE GRUY:** No, Your Honor.

8 **BY THE COURT:** Okay. The Court's ruling was not
9 that that type testimony, that the popularity of that
10 shoe was irrelevant. The ruling was that her opinion
11 as to whether they were popular was irrelevant. One,
12 to give a lay opinion, she must give some kind of
13 basis for that opinion, but in addition to that, there
14 had already been a lot of testimony about the
15 popularity of the shoe, and her opinion as to the
16 popularity of it is irrelevant. But as a 403 ruling,
17 it is ruled as cumulative at that point in time.

18 All right. The next is on the uncorroborated and
19 unreliable testimony of Odell Hallmon. That was
20 sufficiently covered at trial in that there was a
21 cautionary instruction given twice, once when he
22 testified, once at the end. There was another
23 instruction also given at that time, I believe, when
24 he testified. Anyhow, the Court required that his
25 criminal record be told to the jury at that time, so
26 they had all that information. The case law is
27 sufficient on that that I think that is admissible
28 testimony. It is up to the jury to decide whether to
29 believe it or not.

Post Trial Motion Hearing

1 The 404 question raised in 17, I don't know which
2 one you are talking about.

3 **BY MR. DE GRUY:** That was the testimony in Mr.
4 Hallmon's testimony.

5 **BY THE COURT:** There was no limiting instruction
6 for a witness.

7 **BY MR. DE GRUY:** There was no limiting
8 instruction to his testifying concerning -- the
9 substance of his testimony, he brought out other
10 crimes evidence, alleged that Mr. Flowers had
11 committed other crimes or bad acts. There was no
12 limiting instruction to that.

13 **BY MR. EVANS:** What other -- I don't understand
14 what other bad act he is referring to, Your Honor.

15 **BY THE COURT:** I don't recall that either.

16 **BY MR. EVANS:** If he is referring to the fact
17 that he was asked to help the Defendant make up a
18 statement. To start with, as this Court is well
19 aware, but for the record was a defense witness in
20 Flowers II. In this case he admitted that he lied in
21 Flowers II which we were not, did not go into that
22 with the jury. We just went into the fact that he had
23 agreed with the defense to make up a version about
24 what happened. And all of that is related to this
25 particular crime. It's not another crime.

26 **BY THE COURT:** Is that what you are talking
27 about?

28 **BY MR. DE GRUY:** The Court, the allegation that
29 Mr. Flowers suborned perjury in attempting to get him

Post Trial Motion Hearing

1 to give false testimony. The Court ruled that that
2 was admissible, and the Court ruled that that -- as
3 the notes I have, that the Court said that was part of
4 a plan. That was the exception that it went under,
5 and there was no objection-- no limiting instruction
6 given to the jury on that. That is basically 17, what
7 we are raising in number 17.

8 **BY THE COURT:** Okay, I'm going to adopt my ruling
9 at trial on that.

10 Okay, number 18. The question about the
11 polygraph examination, I mean it wasn't a question,
12 but the response from Odell Hallmon on the polygraph,
13 as I recall, was an unsolicited response from him.
14 But it was done on cross-examination. It was not done
15 by the State. And it also did not -- all that said
16 was there had been one. It did not say what the
17 results were. I do not find that to be error.

18 Object to the battery receipt with no connection
19 to the case. I believe the relevance of that was the
20 time on that battery receipt, was it not?

21 **BY MR. DE GRUY:** That was what our objection was.
22 The receipt was dated after the crime.

23 **BY MR. EVANS:** Which battery receipt? Are we
24 referring to the batteries, Your Honor, that were
25 purchased by Mr. Collins on the day of the crime, or
26 are we referring to the receipt for the batteries that
27 were dumped off the vehicle? I don't know which ones
28 we are talking about.

29 **BY MR. DE GRUY:** Only one battery receipt was

Post Trial Motion Hearing

1 introduced into evidence. The battery receipt
2 received by Tardy Furniture for the batteries that
3 were allegedly broken by Mr. Flowers.

4 **BY MR. EVANS:** And that was relevant because this
5 is the batteries that started the whole case. That is
6 the batteries that he dropped off the vehicle and
7 admitted in his own statement that he dropped off the
8 vehicle and that the money was being held out of his
9 check for.

10 **BY THE COURT:** Right, and I think that was my
11 ruling. If not, it's what it is now.

12 Number 20. What does -- what are we talking
13 about there, Mr. de Gruy? The last witness.

14 **BY MR. DE GRUY:** Yes.

15 **BY MR. EVANS:** Your Honor, in response to that,
16 there was nothing about victim character brought out
17 with him. This witness was important because no one
18 had shown what time that victim went to work. We were
19 trying to show what time he went to work. The only
20 thing that he brought out is that they had spent the
21 night together, what time he brought him to work the
22 next day, and who he saw there when he brought him. I
23 think Mr. Golden was present when he brought him
24 there. It's for a time factor. It also shows and
25 explains to the jury this is the only witness that did
26 anything to explain to the jury why there really were
27 no photographs of him, that he did live for a while.
28 He explained approximately how long he lived, where he
29 was during that time, and he said he visited him in

Post Trial Motion Hearing

1 the hospital while he was still living. So it was
2 necessary for a time factor and also to explain, help
3 explain what Dr. Hayne followed up with about why that
4 autopsy was done later and there was some medical
5 intervention. We could have brought in local doctors
6 and nurses to go through all that. But for saving
7 time, we didn't go into all that, and he was the only
8 witness that we even put on that explained that he was
9 in the hospital here.

10 **BY THE COURT:** Anything else?

11 **BY MR. DE GRUY:** No, Your Honor; we don't.

12 **BY THE COURT:** The Court found at trial and finds
13 now that it had some relevance in relation certainly
14 to the time in which he was, when Mr. Stewart arrived
15 at the business. In the overall scheme of things,
16 probably it had that probative value, but other than
17 that, didn't have a whole lot of probative value but
18 had no prejudicial effect. That was the 403 ruling
19 that the Court had.

20 In the surrebuttal issue, the rules don't
21 necessarily allow surrebuttal. It's within my
22 discretion to do that. It has to be when new matters
23 are brought up, and I found that that did not happen
24 in this case, so that's the reason I did not allow
25 surrebuttal. I also don't find that the Defendant was
26 prejudiced by that. I do find that the Defendant was
27 not prejudiced by that.

28 I don't understand number 22.

29 (Off the record while Mr. de Gruy looks in his

Post Trial Motion Hearing
notes.)

1
2 **BY MR. DE GRUY:** Your Honor, it was during the
3 testimony, yeah, the testimony of Connie Moore, and
4 the objection was to the phrasing of the question to
5 Ms. Moore which implied -- let me make sure. The
6 question was after Curtis killed them or he came there
7 after Curtis killed them. It implied in the question
8 guilt. There was an objection made to that. (Pause)
9 And that's the notes I had on that question. We made
10 an objection; it's on the record.

11 **BY THE COURT:** And I overruled the objection?

12 **BY MR. DE GRUY:** And you overruled the objection.

13 **BY THE COURT:** Okay. I will adopt the ruling I
14 made at the time that was done, and it was in relation
15 to the testimony of Connie Moore; is that right?

16 **BY MR. DE GRUY:** Yes, sir.

17 **BY THE COURT:** That would direct somebody's
18 attention to what we are talking about; right?

19 **BY MR. DE GRUY:** Yes, Your Honor.

20 **BY THE COURT:** Okay. On the victim impact
21 evidence, you made your objections at trial on that.
22 I think my ruling was correct on that, and I adopt
23 that ruling. Where did I limit you on mitigation?

24 **BY MR. DE GRUY:** We sought to question a witness
25 who had sung with -- Tarryon Daniels. He had sung in
26 the choir with Mr. Flowers, and I believe the State's
27 objection was that it would be somehow execution
28 impact because this witness -- the point was, of his
29 testimony was how Curtis interacted with this singing

Post Trial Motion Hearing

1 group and the effect he had on his singing group in
2 his life, not how in executing Mr. Curtis, Mr. Flowers
3 would have on the singing. But if he simply -- we
4 were attempting to elicit testimony that he gave up
5 the singing group and quit singing because he couldn't
6 sing without Mr. Flowers, that he had lost that either
7 way, no matter what the jury was going to do. We
8 weren't attempting to show any type of execution
9 impact. We were simply trying to show the effect that
10 Mr. Flowers had on the people around him. And the
11 Court didn't allow me to ask that question or let that
12 answer be made.

13 **BY MR. EVANS:** I don't remember anything like
14 that that the Court didn't allow, Your Honor. The
15 only thing -- and I can't remember specifically. I
16 think the only objection, and we didn't have much to
17 say to or about any witnesses that they put on in
18 mitigation. I think there was one question asked
19 about what impact his death would have on a singing
20 group which is improper, and we objected to that. But
21 we didn't object to anything that they wanted to put
22 on about his life and things like that. That's the
23 only thing that I can remember that we even objected
24 to other than the so-called expert. I think we had an
25 objection on that. But I can't remember anything that
26 he is talking about.

27 **BY THE COURT:** I don't recall it either. I will
28 adopt whatever ruling I made at trial on that, and say
29 that too I not only didn't limit it, I allowed the

Post Trial Motion Hearing

1 expert to testify, and that may have been stretching
2 the rules there.

3 On the instructions, the instructions are what
4 they are, and I have ruled on those, each one at
5 trial. Your objections, Mr. de Gruy, are I think
6 adequately preserved in the record, and I think the
7 jury was adequately instructed. In fact, I am
8 confident they were, so that part of it is overruled.

9 The Court not only has examined the motion, heard
10 the arguments of Counsel, but has examined certain
11 portions of the transcript in relation to some of
12 these issues to make sure of exactly what I ruled, and
13 after doing that, the Court finds that the Motion for
14 New Trial has no merit and is therefore overruled.

15 Mr. Evans, you should prepare me an order to that
16 effect.

17 **BY MR. EVANS:** Yes, sir.

18 **BY THE COURT:** Anything else?

19 **BY MR. DE GRUY:** No, Your Honor.

20 **BY THE COURT:** Okay. Court will be in recess.

21 TRANSCRIPT CONCLUDED.

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APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY _____ D.C.

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COUNTY OF MONTGOMERY

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